TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~255.~~ 67

EDWARD G. HANRICK, ADMINISTRATOR OF EDWARD HANRICK, DECEASED, PLAINTIFF IN ERROR,

vs.

JOSEPH NEELY, ROBERT MOORE, WILLIAM PIERSON, AND FIELDING RUBLE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED SEPTEMBER 23, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 255.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the circuit court of the United States for the western district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which was in the said circuit court between Edward G. Hanrick, administrator of Edward Hanrick, dec'd, plaintiff in error, and Joseph Neely, Robert Moore, William Pierson, and Fielding Ruble, defendants in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; and, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 1st day of March, anno Domini one thousand eight hundred and sixty-nine.

[SEAL.] M. HOPKINS, *Clerk.*

Allowed by— T. H. DUVAL,
U. S. District Judge, sitting as Circuit Court Judge.

2 In obedience to the requirements of the foregoing writ, the following transcript is therewith transmitted, to wit:

3 UNITED STATES OF AMERICA:

Circuit court of the United States in and for the western district of Texas, holding sessions at Austin, in said district.

Be it remembered that on the fourth day of January, A. D. 1869, being the first Monday of said month, in pursuance of law, a term of the circuit court of the United States for the western district of Texas was begun and held at the city of Austin, in said western district of Texas; in the absence of a circuit court judge, the Hon. Thomas H. Duval, district court judge for said district, holding said court, and presiding during said term.

Among other, the following numbered and entitled cause came on to be heard, to wit:

EDWARD G. HANRICK, ADM'R OF EDWARD Hanrick, dec'd, plaintiff,
vs.
HENRY DUTY, E. H. HATCH, Y. W. H. McKissack, John H. Pierson, Gilbert Jackson, James Johnson, James Johnson, jr., W'm McKissack, Joseph Neely, Robert Moore, J. R. Kirkpatrick, W. P. Kirkpatrick, W. H. Kirkpatrick, defendants. } No. 93.

The petition is endorsed: Filed October 21st, 1854.
W. P. DE NORMANDIE, *Clerk.*

This suit is brought as well to try title as for damages.

ALLEN AND HALE, *Att'ys.*

And is in words, to wit:

4 *Petition.*

To the Hon. Jno. C. Watrous, judge of the district court of the United States for the district of Texas:

The petition of Edward Hanrick, of the town of Montgomery, in the State of Alabama, and a citizen of the said State of Alabama, complaining against Henry Duty, of the county of Falls, a citizen of the State of Texas; E. H. Hatch, of the same county, and a citizen of the State of Texas; Y. W. H. McKissick, of the same county, and a citizen of the State of Texas; John H. Pierson, of the same county, and a citizen of the State of Texas; Gilbert Jackson, of the same county, and a citizen of the State of Texas; James Johnson, of the same county, and a citizen of the State of Texas; James Johnson, jr., of the same county, and a citizen of the State of Texas; William McKissick, of the same county, and a citizen of the State of Texas; Joseph Neely, of the same county, and a citizen of the State of Texas; Robert Moore, of the same county, and a citizen of the State of Texas; R. Kirkpatrick, of the same county, and a citizen of the State of Texas; W. P. Kirkpatrick, of the same county, and a citizen of the State of Texas; and W. H. Kirkpatrick, of the same county, and a citizen of the State of Texas, hereinafter called defendants, respectfully sheweth that the said defendants heretofore, to wit, on the first day of January, A. D. 1853, with force and arms, at the county aforesaid, broke and entered the close of your petitioner there situate, containing five leagues of land surveyed for Pedro Zarga, as part of an eleven-league grant made to him by the State of Coahuila and Texas, the concession whereof bears date on or about
5 the 21st day of May, 1830, and bounded eastward by the Brazos River and a two-league survey made for one Juan Jose Acosta, northward by a tract of land surveyed for one Ignacio Galindo, and its southerly line produced, and southward by said survey of Acosta and a league survey made for one Rafael de Aguirre, whereof your petitioner was then and there seized in his demesne as of fee and right; and the said defendants being so entered, without license or authority, then and there cut down and carried away one thousand cedar trees of the value of ten dollars each, and one hundred oak trees of the value of ten dollars each; and then and there disseized and removed your petitioner, and with force and arms as aforesaid still hold him out, and other wrongs then and there did to the damage of your petitioner eleven thousand dollars.

Wherefore he brings suit, and prays that the said defendants be cited to appear at the court aforesaid, next to be held at Austin, within and for said district, to answer your petitioner in the premises, and that he may have judgment for the recovery of possession of his said close, or for his damages aforesaid against the said defendants, and for general relief.

By ALLEN & HALE, *his Att'ys.*

Process issued against all the defendants, 13 in No., as appears by the endorsement on each citation.

"Issued Oct. 21st, 1854.

"W. P. DE NORMANDY, *Clerk.*"

Service was had, as it appears by the marshall's returns endorsed on the returned citations, on the following defendants, to wit: Henry Duty, E. H. Hatch, Y. W. H. McKissack, Jno. H. Pierson, Gilbert Jack-
6 son, James Johnson, James Johnson, jr., Joseph Neely, Robert Moore, and W. P. Kirkpatrick, 10 defendants. The marshall's returns of process for the other 3 def'ts is endorsed; "Not found for W'm McKissack," "Removed from the district as to W. H. Kirkpatrick," and "Not executed as to J. R. Kirkpatrick."

Dec. 4, 1854.—Motion for order of survey.

District court of the United States, district of Texas, at Austin.—November term, A. D. 1854.

EDWARD HANRICK }
vs.
HENRY DUTY ET AL. }

And now comes the said plaintiff by his att'y, and moves the court to order that Isham McMillan, district surveyor of Milam land district, or his successor in office, be appointed and directed to make a survey of the tract of land claimed by the said plaintiff, and of the several tracts that may be claimed by the said defendants, and also of any lines that either of said parties may desire to have run, at such time or times as either of said parties may desire; application to that effect being first made to such surveyor, and notice of the time of making such survey being given to the several parties, or their attorneys, at least thirty days before the making of such survey; and that after such survey or surveys have been made, the said surveyor shall make out and return to this court a proper plot of the lines run by him, and his field-notes, together with a full report of the manner of making such survey, and his reasons therefor, and such a description of the ground and natural objects as may be pertinent, and also an account of his fees; and that such survey, plot, field-notes, report, and description may be used upon the trial of the above-entitled cause, subject to legal objections.

ALLEN & HALE, *Att'ys for Pl'ff.*

7 *Order of survey granted, &c., &c.*

And in the same court, on the 1st day of December, 1854, comes the plaintiff, by his attorneys, and moves the court for an order of survey in this case; and no objection being made to said motion by the defendants' counsel, they being present in court, it is therefore ordered that Isham W. McMullin, district surveyor of Milam land district, or his successor in office, be, and is hereby, appointed and directed to make a survey of the tract of land claimed by the said plaintiff, and of the several tracts that may be claimed by the said defendants, and also of any lines that either of said parties may desire to have run at such time or times as either of said parties may desire; application to that effect being first made to such surveyor, and notice of the time of making such survey being given to the several parties, or their attorneys, at least thirty days before the making of such survey.

And that after such survey or surveys have been made, the said surveyor shall make out and return to this court a proper plot of the lines run by him, and his field-notes, together with a full report of the manner of making such survey, and his reasons therefor, and such a

description of the ground and natural objects as may be pertinent, and also an account of his fees; and that such survey, plot, field-notes, report, and description may be used upon the trial of the above-entitled cause, subject to legal objections, to be returned to this court on or before the first day of the next term, to which time this cause is continued.

8 SEPT. 3D, 1855.—The following answers were filed:

Answer of W'm Pierson.

Filed Sept. 3d, 1855.

W'M P. DE NOMANDY, *Clk.*

In U. S. dist. court, at Austin.—A. D. 1855.

EDWARD HANRICK
vs.
HENRY DUTY ET AL.

And now comes W'm Pierson, and prays to be made a party defendant to this suit, and by way of answer to said pl'ff's petition says that the matters and things therein set forth are insufficient to enable him to maintain his aforesaid action, and by way of special exception to the sufficiency of said petition says that the land claimed in said petition is not described with sufficient accuracy and precision; of all which he prays judgment of the court, &c.

And for further answer in this behalf, the said defendant denies all and singular the allegations in pl'ff's petition set forth, and says that he is "not guilty" of the charges therein alleged against him; and of this he puts himself upon the country, &c.

And for further answer the said defendant says that he entered upon and took possession of the upper half of a league and labor of land granted by the government to W'm Spurgeon, on the 28th day of December, 1834, which he supposes to be a portion of the land described in pl'ff's petition, and that he is the legal owner of said land by regular chain of transfer from the said Spurgeon; all of which he is ready to verify, &c.

And for further answer in this behalf the said defendant says that he has had and held peaceable possession of said land, under colour of title duly proven and recorded in the county in which the land lay at the time of such recording, for a term of five years from and after the recording of said title, and prior to the institution of said suit;

9 and of this he puts himself upon the country.

And for further answer, that for more than five years next preceeding the institution of said suits he had peaceable adverse possession of said land, cultivating and enjoying the same, paying taxes thereon, and claiming under deeds duly recorded in the county in which the land lay at the time of such recording; and of this he puts himself upon the country, &c., &c.

And for further answer, that he had and held adverse peaceable possession of said lands for three years next preceeding the institution of said suit, under a regular chain of transfer from the sovereignty of the soil; and of this he puts himself upon the country, &c., &c., &c.

HARRISON & CRAIK,
For Pierson.

10 *Answer of Jno. H. Pierson.*

In U. S. district court, at Austin.—A. D. 1855.

EDWARD HANRICK
vs.
HENRY DUTY ET ALS. } No.

And now comes the defendant, Jno. H. Pierson, by his att'y, and, by way of answer to said plaintiff's petition, says that the matters and things therein set forth are insufficient in law to maintain his aforesaid action, and by way of special exception to the sufficiency of s'd petition says that the land claimed in said petition is not described with sufficient accuracy and precision; of all which he prays judgment of the court, &c.

And for further answer in this behalf said defendant denies all and singular the allegations in pl'ff's petition set forth, and says that he is "not guilty" of the charges therein alleged against him; and of this he puts himself upon the country, &c., &c.

And for further answer the said defendant says that he entered upon, and took possession of, the southern half of a league of land granted by the government to Fieldin Ruble, December 27th, 1834, which he supposes is a portion of the land described in plaintiff's petition, and that he is the legal owner of said land by regular chain of transfer from the said Ruble to himself, and that he entered upon, and took possession of, 25 labors of land granted by the government to W'm Spurgeon on the 28th day of Dec'r, 1834, which he supposes to be a portion of the land described in plaintiff's petition, as the tenant of Thomas Roberts, and W'm Pierson, who are the legal owners of said land by regular chain of transfer from the said Spurgeon, and whom he prays may be permitted to defend this suit; all which he is ready to verify, &c.

11 And for further answer in this behalf the said defendant says that he, and those under whose right he claims, have had and held peaceable possession of said tracts of land, under color of title duly proven and recorded in the county in which the land then lay, for a term of more than five years from and after the recording of said title, and prior to the institution of said suit; and of this he puts himself upon the country.

And for further answer, that for more than five years next preceeding the institution of said suit, he, and those under whom he claims, have had peaceable possession of said lands, cultivating and enjoying the same, & paying tax thereon, and claiming under deeds duly recorded in the county in which the lands then lay; and of this he puts himself upon the country, &c., &c.

And for further answer, that he, and those under whom he claims title, had and held adverse peaceable possession of said lands for three years next preceeding the institution of said suit, under a regular chain of transfer from the sovreignty of the soil; and of this he puts himself upon the country, &c., &c.

HARRISON & CRAIK,
For Pierson.

Filed Sept. 3d, 1855.

W. P. DE NORMANDY, *Clerk.*

The three defendants Kirkpatrick disclaim, to wit:

Kirkpatricks' (3) disclaimer.

United States of America, dist. of Texas.

EDWARD HANRICK
vs.
W. H. KIRKPATRICK, W. P. KIRKPATRICK, J. R. Kirkpatrick.

Now, at this term of the court, comes the aforesaid defendants, and say that they disclaim owning, claiming, or setting up any title in to the land and premises described in the said petition; they therefore ask that they be dismissed, with their costs.

A. J. EVANS,
Attorney for Defendants.

Filed Nov'b'r 12th, 1855.

W. P. DE NORMANDIE, *Clerk.*

12 *Answer of Hatch & Jackson.*

U. S. district court, Austin, Texas.—A. D. 1855.

EDWARD HANRICK
vs.
HENRY DUTY ET ALS.

And now, at this time, come the defendants E. H. Hatch and Gilbert Jackson, and deny all and singular the allegations of said plaintiff's petition, and say that they are "not guilty" of said trespass in manner and form as therein alleged; and of this he puts himself on the country.

J. A. & R. GREEN,
Def'ts' Attorneys.

Filed Nov. 28th, 1855.

W. P. DE NORMANDIE, *Clerk.*

Answer of Fieldin Ruble.

In U. S. district court, Austin.—A. D. 1855.

EDWARD HANRICK
vs.
HENRY DUTY ET ALS.

And now comes Fieldin Ruble, and prays to be made a party defendant to this suit; and, by way of answer to pl'ff's petition, says that the matters and things therein set forth are insufficient to enable him to maintain his aforesaid action; of which he prays judgment of the court, &c.

And for further answer in this behalf, the said defendant denies all and singular, the allegations in plaintiff's petition set forth, and says that he is "not guilty" of the charges therein alleged against him; and of this he puts himself upon the country, &c.

And for further answer, the said defendant says that he entered upon and took possession of the upper half of a league of land granted to him by the government, Dec'r 27th, 1834, which he supposes is a portion of the land described in plaintiff's petition, and that he is the legal owner of said land by the said grant from the government; all which
13 he is ready to verify to.

And for further answer in this behalf, the said defendant says that he has had and held peaceable adverse possession of said land, under color of title duly proven and recorded in the county in which the land lay at the time of such recording, for a term, of five years from and after the recording of said title and prior to the institution of this suit; and of this he puts himself upon the country, &c., &c.

And for further answer, that for more than five years next preceeding the institution of said suit, he had peaceable adverse possession of said land, cultivating and enjoying the same, paying taxes thereon, and claiming under deeds duly recorded in the county in which the land lay at the time of such recording; and of this he puts himself upon the country, &c., &c.

And for further answer says, that he had and held adverse peaceable possession of said land for three years next preceeding the institution of said suit, under a regular chain of transfer from the sovreignty of the soil; and of this he puts himself upon the country, &c.

HARRISON & CRAIK,
For Ruble.

Filed Nov'r 28th, 1855.

W. P. DE NORMANDIE, *Clerk.*

Nov'r 28, 1855.—*Answer of Neely.*

In United States district court, at Austin.—A. D. 1855.

EDWARD HANRICK
vs.
HENRY DUTY ET ALS.

And now comes Joseph Neely, and, by way of answer to said plaintiff's petition says that the matters and things therein set forth are insufficient to enable him to maintain his aforesaid action; of which he prays judgment of the court.

14 And, for further answer in this behalf, the said defendant denies all and singular the allegations in plaintiff's petition set forth, and says that he is "not guilty" of the charges therein alledged against him; and of this he puts himself upon the country, &c.

And, for further answer, the said defendant says that he entered upon, and took possession of, the upper half of a league of land granted by the government to Fieldin Ruble, December 27th, 1834, and which he supposes to be a portion of the land described in plaintiff's petition, as the agent and tenant of his father-in-law, the said Fieldin Ruble, and that the said Ruble is the legal owner of said half league of land, &c.; all which he is ready to verify, &c., &c.

And, for further answer in this behalf, the said defendant says that he has had and held peaceable adverse possession of said land, as the agent of the said Ruble, under color of title duly proven and recorded in the county in which the land lay at the time of such recording, for a term of five years from and after the recording of said title, and prior to

the institution of this suit; and of this he puts himself upon the country, &c., &c.

And, for further answer, that for more than five years next preceding the institution of said suit, that he had peaceable adverse possession of said land, cultivating and enjoying the same, paying taxes thereon, and claiming under deeds duly recorded in the county in which the land lay at the time of such recording; and of this he puts himself upon the country, &c.

And, for further answer, that he had and held adverse peaceable possession of said land for three years next preceeding the institution of said suit, under a regular chain of transfer from the sovreignty of the soil; and of this he puts himself upon the country, &c., &c.

The defendant prays that the said Fieldin Ruble may be allowed to defend this suit.

HARRISON & CRAIK,
For Neely.

Filed Nov'r 28th, 1855.

W. P. DE NORMANDIE, *Clerk.*

15 *Dec. 3d, 1855.—Order of continuance.*

And in the same court, on the 3d day of December, A. D. 1855.

On this day came the parties, by their attorneys, and by consent it is ordered that this case be continued until the next term of this court.

DEC'R 4TH, 1855.—E. H. Hatch filed his disclaim in words, to wit:

Disclaimer by E. H. Hatch.

Filed Dec'r 4th, 1855.

W. P. DE NORMANDIE, *Clk.*

U. S. dist. court, at Austin.—November term, A. D. 1855.

EDWARD HANRICK
vs.
JOSEPH DUTY ET AL.

In this cause now comes the defendant E. H. Hatch, and disclaims any interest in the subject-matter of this controversy. He says that he did not, at the commencement of this suit, set up any claim to the said land, nor has he ever set up or claimed the same, or any portion thereof; wherefore he prays that he may be dismissed, with his costs.

E. H. HATCH.

16 *Nov'r 20, 1856.—Order of continuance.*

And in the same court, on the 20th day of November, A. D. 1856.

This cause was continued.

June 2nd, 1857.—Order of continuance.

And in the same court, on the 2d day of June, A. D. 1857.

Now, upon this day, came the parties, by their attorneys, and by consent it is ordered that this cause be continued till the next term of the court.

January 4, 1858.—*Order of continuance.*

And in the same court, on the 4th day of January, A. D. 1858.

Now come the parties, by their attorneys, and on motion it was ordered that this cause stand continued by consent.

17 *June* 9, 1858.—*Order of continuance.*

And in the same court, on the 9th day of June, A. D. 1858.

Now, on this day, this cause was called, and on motion it was ordered by the court that this cause stands continued.

January 5, 1859.—*Order of continuance.*

And in the same court, on the 5th day of January, A. D. 1859.

This cause came on to be heard on this day, and the parties appearing, by their attorneys, by agreement, and on motion of the attorneys for plaintiff, it was ordered that this cause be continued.

JUNE 2ND, 1859.—The following notice was filed in words, to wit:

Notice by pl'ff of filing deed.

Filed June 2nd, 1859.

MATTHEW HOPKINS, *Clerk.*

Dist. court of the United States, west. dist. of Texas, at Austin.

EDWARD HANRICK
vs.
HENRY DUTY ET AL.

To the defendants' or other counsel within cause:

Take notice that we have filed, to be used as evidence in this cause, a certified copy of a recorded deed of conveyance from Pedro Zarza, by his att'y in fact, R. M. Williamson, to Edward Hanrick, dated June 27th, 1851.

ALLEN AND HALE,
Att'ys for E. Hanrick.

18 *June* 7, 1859.—*An order of continuance.*

And in the same court, June 7th, A. D. 1859.

Now, on this day, this cause being called, and counsel not appearing, it was ordered that this cause be continued.

January 4, 1860.—*Order of continuance.*

And in the same court, on the 4th day of January, A. D. 1860.

Now, on this day, came the parties, by their attorneys, and on motion of defendants' counsel, it was ordered that this cause be continued.

January 9, 1861.—*Order of continuance.*

And in the same court, on the 9th day of January, A. D. 1861.

This cause being called, the counsel for the defence, John A. Green, esq., moved the court, as the counsel for pl'ffs were absent, to have the case passed, and the case was continued by the court on his statement.

January 16, 1867.—*Order—death of pl'ff suggested, and cont'd.*

And in the same court, on the 16th day of January, A. D. 1867.

On this day came the plaintiff, by Hancock & West, and the defendants, by Jno. A. Green. The death of the plaintiff was suggested, and the cause continued.

19 *Amended petition of Hanrick's ad'r.—Dismisses as to Duty & als.*

Filed June 4th, 1867.

M. HOPKINS, *Clerk.*

United States dist. c't, western dist. of Texas.—June term, A. D. 1867.

EDWARD G HANRICK, ADM'R OF EDWARD HANRICK,
vs.
HENRY DUTY ET AL.

At this term of the court comes Edward G. Hanrick, adm'r of the estate of Edward Hanrick, dec'd, and his only heir, and, making himself a party plaintiff, dismisses this suit as to the defendants Henry Duty, E. H. Hatch, W. H. McKissack, Gilbert Jackson, James Johnson, James Johnson, jr., W'm McKissack, R. Kirkpatrick, W. P. Kirkpatrick, W. H. Kirkpatrick, but prosecutes said cause as to defendants Jno. H. Pierson, Joseph Neely, Robert Moore, W'm Pierson, Thomas Roberts, and Fielding Ruble.

And, complaining further of said defendants, says that since this suit was instituted against them on the 21st day of Oct., A. D. 1854, they have continued to trespass upon the s'd land described in plaintiff's original petition, and have cut down and destroyed a large amount of valuable timber, & have been using, cultivating, and enjoying said lands; that the amount of timber cut and destroyed was reasonably worth the sum of five thousand dollars; and that the use and enjoyment of said land, with the rents and profits thereof, is reasonably worth the further sum of twenty-five hundred dollars.

Plaintiff, therefore, asks for a judgment against said defendants for the said sum of seven thousand five hundred, and for all other and further damages, and for his costs in this behalf expended, and for all other relief to which he may be entitled.

E. J. GURLEY, *Att'y for Pl'ff.*

20 *June* 4, 1867.—*Order—adm'r made pl'ff, & order dismissing, &c.*

And in the same court, on the 4th day of June, A. D. 1867.

And now came the parties, by their respective attorneys, and thereupon E. J. Gunley, esq., representing the administrator of the estate of

said Hanrick, dec'd, moves the court and is made party to the suit, and thereupon dismisses this cause as to all the defendants herein, except the def'ts Moore, Pierson, Neely, Roberts, and Ruble, at the cost of plaintiffs. By agreement both parties have leave to take depositions in accordance with the State practice, and the case is continued by consent.

June 13, 1867.—*Disclaimer by Moore.*

Filed June 13, 1867.

MATTHEW HOPKINS, *Cl'k.*

United States district court, Austin, Texas.—June, A. D. 1867.

EDWARD HANRICK
vs.
HENRY DUTY ET AL. } No. 93.

And now comes the said Robert Moore, one of the defendants in the above styled and numbered cause, and disclaims any and all right, title, claim, or interest, of any nature whatsoever, in and to any part of the land sued for, and described in plaintiff's petition, and says that he entered and took possession thereof, as the tenant of said pl'ff, and now here in court acknowledges that the title to said land is in the legal representative of s'd pl'ff; wherefore the said defendant Robert Moore prays that he may be dismissed, with his costs.

CARRINGTON, HERRING & ANDERSON,
Att'ys for Defendant Robert Moore.

21 *June* 13, 1867.—*2d amended petition.*

United States circuit court, western district of Texas.—June term, A. D. 1867.

EDWARD HANRICK
vs
HENRY DUTY ET AL. }

At this term of the court comes the plaintiff, and, amending his original petition, says that the land sued for by pl'ff is here described more particularly as follows, to wit:

Two certain tracts of land granted to Pedro Zarza, by the State of Coahuila and Texas, now lying in the State of Texas, situated and bounded as follows, that is to say: The first lying on the right bank of the Brazos River, below and adjoining a tract surveyed for Ignacio Galindo, beginning at the lower corner of said tract, at a stake on the right bank of said river, from which a white mulberry, six inches in diameter, bears S. 50 W. $5\frac{8}{10}$ varas, and a sycamore, 8 inches in diameter, bears N. $6\frac{1}{2}$ E. $8\frac{4}{10}$ varas; thence S. 62 W., & following the lower boundary line of said tract, 19,330 varas, to a stake for the 2nd corner, from which a sycamore, 6 inches in diameter, bears N. $18\frac{1}{2}$ E. 59 varas, & a white mulberry, 5 inches in diameter, bears N. 12 E. 6 varas; thence S. 28 E. 5,000, to a stake for third corner, from which a mesquite tree, 6 inches in diameter, bears S. 390, E. 30 varas, and another mesquite, 5 inches in diameter, bears S. 63 E. 28 varas; thence N. 72 E. 21,730 varas, to the said river Brazos, to a stake for fourth corner; thence, following the meanders of the river, to the point of beginning

—containing 100,000,000 square varas, or four sitios, or square leagues of land, of which one sitio is temporal, and three sitios pasture land.

The second tract, lying on the creek known as Cow Bayou, adjoining the tract of four leagues described above, and also adjoining a tract surveyed for Juan Jose Acosta, beginning at the west or northwest corner of the said Acosta, at which is a stake, from which an elm, five inches in diameter, bears north 14 E. 2 varas, and a white mulberry, 6 inches in diameter, bears S. 64½ W. 12 varas; thence S. 62 W.
22 10,000 v's, to a stake for the 2nd corner; thence S. 28 E. 5,000 v's, to a stake for third corner; thence N. 62 E. 10,000 v's, to a stake on the boundary line of the aforessid tract; thence N. 28 W., following the boundary, to the place of beginning—containing 25,000,000 square varas, or one sitio of land, of which 21 labors are pasture land, and four labors are temporal lands.

Both said tracts now lie in Falls Co., Texas, and are fully described in the title issued to said Pedro Zarza, by Luke Lecassier, alcalde of the town of San Felipe de Austin, and special commissioner for this purpose, on the 12th of October, 1833, and in the proceedings had preliminary thereto. Which said description plaintiff prays may be considered by the court in the further progress and trial of this cause.

HALE & GURLEY, *for Pl'ff.*

Filed June 13, 1867.

MATTHEW HOPKINS, *Clerk.*

Plff's notice of filing deeds.

United States district court, western district of Texas.—June term, A. D. 1867.

EDWARD HANRICK }
vs.
HENRY DUTY ET AL. }

Pl'ff in the above-styled cause now pending in the U. S. circuit court, or his att'y of record, will take notice that we have filed among the papers in s'd cause a deed executed by R. M. Williamson, att'y for Pedro Zarza, to Edward Hanrick, bearing date 27th day of June, 1851; also a certified copy of a deed from Pedro Zarza, by his s'd att'y Williamson, to Asa Hoxey; a deed also from Asa Hoxey to Edward Hanrick; and a translated copy of the title to eleven leagues of land granted to Pedro Zarza, together with the accompanying documents from the G. L. O., which s'd deeds we purpose using as evidence in the above-styled cause, in behalf of pl'ff.

HALE & GURLEY, *Pl'ffs Att'ys.*

Filed Oct. 4, 1867.

M. HOPKINS, *Clk.*

23 *3d amended petition vs. Magee.*

Filed November 29, 1867.

M. HOPKINS, *Clerk.*

United States circuit court, western district of Texas.

EDWARD HANRICK, ADM'R, }
vs.
HENRY DUTY ET AL. }

Now comes the pl'ff, Edward G. Hanrick, adm'r of the estate of Ed-

ward Hanrick, dec'd, and says that since the institution of this suit one Leonard Magee has entered upon the said land described in pl'ff's original petition, and committed the same and similar trespasses as are charged upon the original defendants, and that he continues to this day and date to commit various trespasses upon said land, residing thereupon, and asserting ownership and title to the said land, or to a part thereof.

Wherefore pl'ff prays that he may be cited to appear, at the next term of this court, as a defendant in this cause, to answer, as such defendant, the charges set forth in pl'ff's original petition, and that pl'ff have a judgment against him for said land, and a writ of possession, and all other and the same relief as may be had against the original defendants in this cause; and as in duty bound, &c., &c., &c.

E. J. GURLEY,
Att'y for Pl'ff.

January 7, 1868.—*Order.*

And in the same court, on the 7th day of January, A. D. 1868.

This cause being called, came the plaintiffs, by their attorney, E. J. Gurley, and the defendants, by John A. Green; and the cause was set for Thursday next.

24 *Amended answer by F. Ruble.*

United States district court for western district of Texas, at Austin.—January term, 1868.

HANRICK, ADM'R OF EDWARD HANRICK,
vs.
HENRY DUTY ET AL.

In this case now comes the defendant Fielding Ruble, and, by leave of the court, amends his answer in this cause, and says that the plaintiff ought not to have or maintain his aforesaid action against this defendant, because it appears from the pleadings in this cause that the said pl'ff has joined W'm Pierson and Thomas Roberts, as co-defendants with this defendant, when, in truth and in fact, it appears that the said defendants are in posession of the premises, under a chain of right or title; which said chain of right or title is entirely distinct & separate from that under which this defendant claims, that is to say: The said defendants W'm Pierson & Tho's Roberts claim the premises of which they are possessed, and for which they are sued in this action, under and by virtue of a grant from the government of the State of Coahuila and Texas to W'm Spurgeon for one league of land, and not otherwise; whilst the defendant claims title to the premises of which he is possessor, and for which he is sued in this action, under and by virtue of a title issued by the government of the said state of Coahuila and Texas to himself for one league of land, which said titles, to wit, for the W'm Spurgeon and Fielding Ruble leagues, are distinct and separate, and which in no wise conflict with each other.

And this defendant says he is not liable to be sued jointly with the said defendants Pierson and Roberts, and that the said plaintiff has misjoined the said Pierson and Roberts with this defendant.

Whereupon he prays judgment that the said suit be dismissed.

JNO. A. GREEN,
Att'y for Def't Ruble.

And, for further answer in this behalf, the said defendant Ruble says that the said plaintiff, by his amended petition, shows that he has
25 joined in this suit two separate and distinct titles and causes of action, and has included therein a great number of defendants, multiplying costs in said cause, and creating confusion thereby, to wit: He has joined in said action a title to four leagues of land, with a title to one league of land, which title, with the lines and boundaries thereof, are entirely distinct and separate, and with the last of which this defendant in no wise conflicts; wherefore, for said misjoinder, defendant prays that the said suit abate and be dismissed.

All of which matters in both of the above pleas are made manifest by the pleadings in said cause, and by a certified copy of the map of Falls County, Texas, of the property in controversy from the general land office of the State of Texas, hereto attached, and prayed to be made part of this answer.

JNO. A. GREEN,
Att'y for Ruble.

Filed January 7, 1868.

M. HOPKINS, *Clerk.*

(Here follows map marked page 25.)

Leave to pl'ff to amend.

And in the same court, on the 16th day of January, A. D. 1868.

On this day came the pl'ffs in this cause by att'y Gurley and, upon his motion, it was ordered that he have leave to amend his pleadings herein.

26 *4th amended petition.*

Filed January 16, 1868.

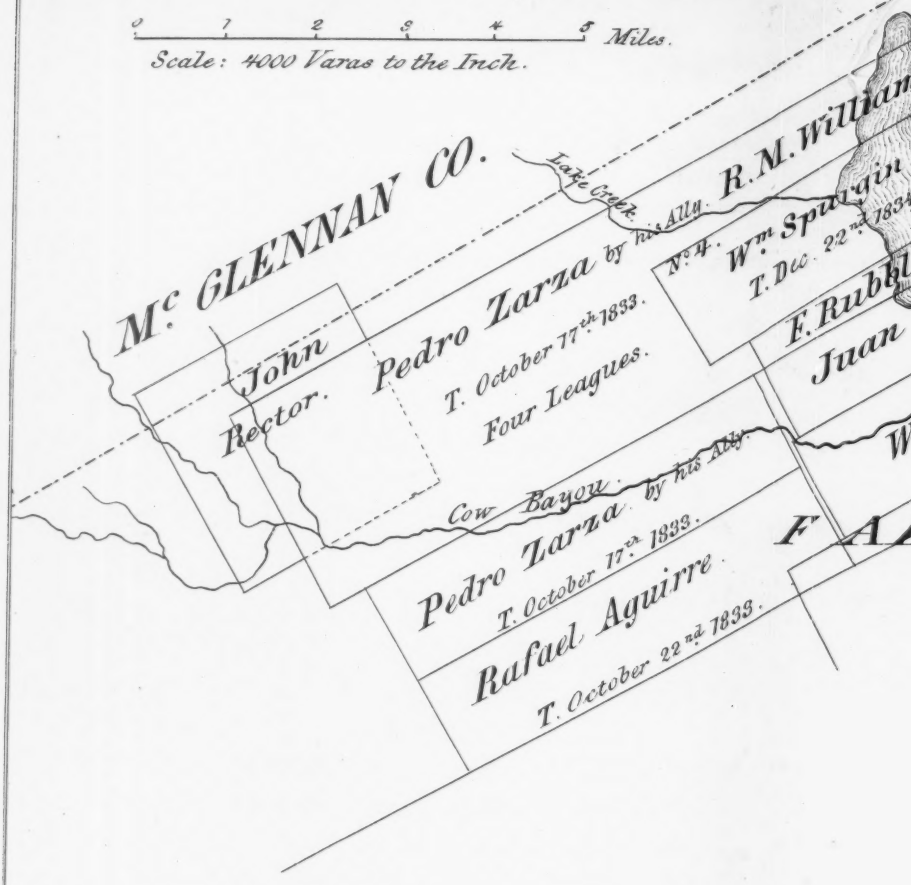
M. HOPKINS, *Clerk.*

U. S. circuit court, western district of Texas.—January term, A. D. 1868.

EDWARD G. HANRICK, ADM'R EDWARD HANrick, dec'd,
vs.
HENRY DUTY ET AL.

At this term of the court comes the pl'ff, and, leave of the court being first had and obtained, amends his petition in this cause and says that the present pl'ff, Edward G. Hanrick, adm'r of Edward Hanrick, dec'd, is a citizen of McLennan Co., State of Texas, and he asks that this allegation be taken and considered as a part of his petition making himself a party plaintiff in this cause; and he further amends by inserting the word "dollars" after the words "seven thousand five hundred" in the third line from the bottom of his petition to be made a party pl'ff in this cause.

E. J. GURLEY,
Att'y for Pl'ff.



N.º 255.

Hanrick adm.s vs. Neely & al.

Page 25.

(A Green-Fees-Sketch, 50 Cts Cost 50 Cts.)

General Land Office.

Austin, January 6th 1868.

I Joseph Spence, Commissioner of the General Land-Office, do hereby certify that the above sketch is a true Copy from the map of Falls County, now in use in this Office.-

In witness whereof, I hereunto set my hand, and cause the seal of office to be affixed, the day and date just above written.-

Joseph Spence.

January 17, 1868.—*Order—death of Jno. H. Pierson, suggested.*

And in the same court, on the 17th day of January, A. D. 1868.

On this day came the parties, by their respective atty's, the pl'ff by Gurley, and the def'ts by Jno. A. Green, esq.; and thereupon the death of John H. Pierson was suggested, and case continued by consent, with leave to pl'ffs to withdraw from file original title papers, on leaving certified copies.

27 *May* 29, 1868.—*Notice by def'ts of filing deeds.*

Filed May 29, 1868.

M. HOPKINS, *Clerk.*

U. S. circuit court, Austin.—June term, A. D. 1868.

HANRICK, ADM'R EDWARD HANRICK,
vs.
HENRY DUTY ET AL.

In the above-entitled case the defendants, Ruble, Pierson, and Roberts, give notice to the plaintiff that they will offer in evidence the following deeds and copies of deeds, which are herewith filed in court:

1st. Testimonio of grant from the Mexican government to Fielding Ruble, dated 27th Dec., 1834.

2. Certified translation of same from general land office.

3. Deed for one-half of above, from Fieldin Ruble to I. G. W. Pierson, dated 6th Jan'y, 1836.

4. Translation certified from general land office, of title for one league of land from Mexican government to William Spurgeon, dated 28th December, 1834.

5. Deed from W'm Spurgeon to I. G. W. Pierson, dated 20th March, 1835.

6. Certified copy from county court of Grimes County, relative to estate of I. G. W. Pierson.

JNO. A. GREEN,
Att'y for Def'ts.

28 *June* 4, 1868.—*Order.*

And in the same court, on the 4th day of June, A. D. 1868.

On this day came the plaintiffs, by Gurley, and thereupon, on motion, it was ordered that this cause be continued to make parties.

January 6, 1869.—*Order.*

And in the same court, on the 6th day of January, A. D. 1869.

On this day came the parties, by their respective att'ys, and this cause was set for hearing on Tuesday next.

January 18, 1869.—*Order—trial commenced.*

And in the same court, on the 18th day of January, A. D. 1869.

On this day, this cause being called, came the plaintiff, by E. J. Gurley

and Walton, & De Normandie, & F. W. Chandler, and the defendants, by Jno. A. Green & D. Sheek, their respective att'ys; and thereupon, on the pleas and issues joined, came a jury of twelve good and lawful men of the western district of Texas, duly empaneled and sworn, to wit, J. A. Baker, and eleven others; and thereupon the plaintiffs dismiss this cause as to J. H. Pierson, dec'd, and as to Tho's Roberts and Leonard McGee; and the case proceeded all of the days of Tuesday, Wednesday, Thursday, and Friday on the pleading and proof.

29 *Amended ans'r of W. Pierson.*

Filed January 18, 1869.

M. HOPKINS, *Clerk.*

U. S. circuit court, western district of Texas, at Austin.

HANRICK, ADM'R, *vs.* HENRY DUTY ET AL.

In this case now comes the defendant, W'm Pierson, and asks leave to file the following amendments, which being obtained, he thereupon says that the said pl'ff ought not to have or maintain his aforesaid action nor his amended petitions in this case, because he says the same are insufficient in law to authorize the said suit.

And for special exception he says that the said present pl'ff, Edward G. Hanrick, who, it is alleged in said amended petitions, is a citizen of Texas, has in his said amendments sued this defendant with other persons, for a trespass, to try title, which is not alleged to be a joint trespass with said others.

2. He has sued this defendant for a new cause of action, whilst he alleges he is a citizen of the State of Texas, and the defendant a citizen of the same.

3. He has made new parties by his said amendments, who it appears are citizens of the State of Texas, to wit: Thomas Roberts and Leonard McGehee.

JNO. A GREEN & SHEEKS,
Att'ys for Def'ts.

And further answering said amended petition, the said def't W'm Pierson says the said pl'ff ought not to have or maintain his action, because he says that the defendant, at and before the time of filing s'd amended pleadings in this cause, in which the land sued for by the pl'ff is identified by locality and metes and bounds, this def't had been in the peaceable possession of the land claimed by him in this cause, to
30 wit, the one-half of the league of land granted by the government to W'm Spurgeon, for one league as a colonist headright for more than three years, which said possession was continuous and uninterrupted, & adverse to all the world, by title to himself by a consecutive chain, emanating from and under the sovreignty of the soil; all of which he prays may be enquired of by the country.

JNO. A. GREEN &
DAVID SHEEKS,
Att'ys for Def'ts.

Amended answer of F. Rouble.

Filed January 18, 1869.

M. HOPKINS, *Clk.*

United States circuit court for west. district of Texas, at Austin.

HANRICK, ADM'R OF HANRICK, DEC'D,
vs.
HENRY DUTY ET AL.

In this case now comes the defendant Fielding Ruble, and asks leave to file the following amendments, which being obtained he thereupon says:

That the said pl'ff ought not to have or maintain his aforesaid action nor his amended petitions in this cause, because he says the same are insufficient in law to authorize the said suit, and for special exception he says that the said present pl'ff, Edward G. Hanrick, who, it is alleged in said amended petitions, is a citizen of the State of Texas, has in said amendments sued this defendant and others, with other persons, for a trespass which is not alleged to be a joint trespass to try title with said others.

2. He has sued this defendant for a new cause of action, whilst he alleges that he is a citizen of the said State of Texas, and the defendant a citizen of the same.

31 3. He has made new parties by his said amendments, who, it appears, are citizens of the State of Texas, to wit: Thomas Roberts and Leonard McGehee.

JNO. A. GREEN & SHEEKS,
For Def'ts.

And, further answering said amended petition, def't Ruble says that said pl'ff ought not to have or maintain his action, because he says that this defendant, at the time of the filing of the amended pleadings in this cause, in which the said land is identified by locality and metes and bounds, this defendant had been in the peaceable possession of the land claimed by him in this cause, and which is sued for, to wit, the one-half of the league of land granted to him by the government as a colonist headright for more than three years, which said possession was continuous and uninterrupted, and adverse to all the world, by title emanating from and under the sovreignty of the soil; all of which he prays may be enquired of by the country.

JNO. A. GREEN &
DAVID SHEEKS,
For Def'ts.

32 *January* 25, 1869.—*Judgment.*

And in the same court on the 25th day of January, A. D. 1869.

On this day came the parties, by their respective att'ys, and the jury empaneled in the cause, and the court having allowed time to the pl'ffs to prepare their several bills of exceptions to the rulings of the court, the evidence being closed, and the jury charged by the court, they returned into court the following verdict:

"We, the jury, find for the defendant in case No. 93.

"J. A. BAKER, *Foreman.*"

It is therefore considered by the court that the defendants go hence without day; that they have and recover of the pl'ff all their costs in this behalf in about their said defence to be taxed, and for all of which

the adm'r be required to pay in due course of administration. It is further ordered that the officers of the court have their execution against the defendants for the costs by them incurred.

33 *January 27, 1869.—Pl'ff's motion for new trial.*

EDWARD G. HANRICK, ADM'R, &c., }
vs.
HENRY DUTY & OTHERS. }

And now comes the plaintiff, by his attorneys, and moves the court to grant him a new trial in this case, and for grounds of the motion says:

1. The court erred in sustaining the objections of def'ts to the introduction of the testimony of the witnesses F. W. Chandler, C. S. West, and E. J. Gurley, and excluding the same when tendered to prove the loss of the records of the dist. court of the United States for the eastern district of Texas, at Galveston, to lay a predicate for the introduction of secondary evidence of the contents of said records; all of which is more fully set out in bill of exceptions marked No. 1.

2. The court erred in ruling that it was incumbent on pl'ff's to comply with the statute law of the State of Texas, (Paschal's Digest, Art's ,) before it was competent to introduce evidence of the loss and destruction of the records of the dist. court of the United States for the eastern dist. of Texas, at Galveston, by the witnesses named in the above paragraph of this motion.

3. The court erred in excluding from the consideration of the jury the deed from R. M. Williamson, attorney of Pedro Zarza, to Edward Hanrick, when offered independent of the decree of the United States district court at Galveston, which deed is of date the 30th day of June, 1857; all of which rulings, excluding said deed & the facts attendant, are set out in bill of exceptions No. 3.

4. The court erred in ruling that the copy of the said decree of the United States dist. court, as recorded in the Falls County clerk's
34 office, and as embraced in bill of exceptions No. 2, was not competent, as secondary evidence, to prove the contents of said lost decree; all of which error is fully shown and set out in bill of exceptions No. 2.

5. The court erred in excluding from the jury as evidence the deed from Thomas F. McKinney to Edward G. Hanrick, adm'r; all of which is more fully set out in bill of exceptions No. 4.

6. The court erred in excluding from the jury the certified copy of the deed from R. M. Williamson, attorney of Pedro Zarza, to Asa Hoxie; which deed is more fully set out in bill of exceptions No. 5.

7. The court erred in instructing the jury to return a verdict for the defendant; said instructions being set out in exception (bill of) No. 6.

8. The verdict of the jury is contrary to the law and the evidence.

9. The plaintiff was surprised at the ruling of the court; set out in bills of exception Nos. 2 & 3.

10. Because injustice has been done to the pl'ff in the rulings of the court and the verdict of the jury.

GURLEY, CHANDLER & WALTON,
For Pl'ff.

Filed January 27, 1869.

M. HOPKINS, *Clerk.*

35 *Order refusing new trial.*

And in the same court, on the 17th day of June, A. D. 1869.

Comes the plaintiff, by his attorney, and moves the court to set aside the verdict and judgment heretofore rendered in this cause, and grant him a new trial for the reasons set forth in his motion filed. On consideration whereof it is ordered by the court that said motion be overruled; and this order having been made on the 20th February, 1869, and by oversight omitted to be entered on the minutes, is entered now as of that day.

36 *Plaintiff's bill of exceptions.—Filed 20th Feb'y, 1869.*

In circuit court United States, west. dist. Tex.—Jan. , 1869.

EDWARD G. HANRICK, ADM'R, &c.,
vs.
H. DUTY & OTHERS.

Be it remembered that on the trial of this case the plaintiff proves, by F. W. Chandler, that he had been and was yet the leading counsel in several cases, and among them, one against May, and another against Allen, and another against Joseph Ruborth, in favor of Asa Hoxie, originally instituted in the district court of Williamson County, Texas, in which said suits was involved the validity of the Pedro Zarza eleven-league grant of land, which is copied, with all the papers relating thereto, in a subsequent part of this bill of exceptions, and, to prevent repetition, is here referred to; and that, as such leading counsel, he had in his possession a paper written in the Spanish language, and that he filed said paper in the clerk's office of the dist. court of Williamson County, on or about the day of , 1855, to be used in the cases hereinbefore named, and others not named, but involving the same issues, touching the validity of the said Pedro Zarza title, to be used on the part of the plaintiff Hoxie, (who claimed under said Zarza title,) as the testimonio of said title on the trial of said causes; that the last time he ever saw said paper, after filing it as aforesaid, it was in the hands of Neill McGaffey, one of the attorneys for the defendants in the cases aforesaid; that, when next his attention was called to the matter of said paper, which, as aforesaid, was filed by him as the testimonio of the said Zarza title, it was missing from the files; that he examined, with the clerk of the court, through all the papers in the several cases in which it was intended to use said paper as evidence, but
37 did not find it; that he then, with the clerk, looked through and thoroughly searched the files of all the cases in said clerk's office in which there was any reason to believe said paper could have been placed, but that it was not found; that he then went with the said Neill McGaffey to the office of him, the said McGaffey, and there, in connection with said McGaffey, made a thorough search for the said paper, but did not find it; that the said McGaffey is dead; that he has searched in every place where there was any reason to believe said paper might be, and has inquired of every person who was likely to know where it was, but has failed to find it; that in said searches and inquiries, he has been unsuccessful in getting trace of said paper, but that he believes he has fully discharged his duty to his client in the character of searches and inquiries he has made for said paper; that he has continued to conduct

the said cases hereinbefore named as counsel, and has done so without ever being able to find or use said paper on the trial of any of said cases; that the said cases have been removed by change of venue from Williamson, where instituted, some to the county of Milam, and some to the county of Travis, and some to the county of Bexar, and some to other counties; but that the searches made by him, as aforesaid, for said paper, was before any change of venue had been taken, and while all the cases were in the dist. court of Williamson County, where they were originally brought; that said paper had attached to it a considerable package of other papers, which together, when folded, made a considerable bundle, and would not be readily overlooked when making a close search for a lost paper; that some of said cases are still pending, and that said paper has not yet been found, but, on the contrary, that he had abandoned all hope of finding it, believing that he had exhausted
38 all reasonable means and feasible modes of seeking it, without effect; that he did not know that said paper was the testimonio of the Zarza title, because it was in Spanish, and he (witness) could not read that language; that he does not know the handwriting of Lessassier, nor does he recollect whether the name of more than one witness was signed to the testimonio, but thinks it was signed by Lessassier, as commissioner, and Givens, as a witness. He also stated that Hoxie, the plaintiff in said suits, was still alive; that Asa H. Willie had been leading counsel; that A. J. Hamilton and others had been att'ys in the case, and had been connected therewith, all of whom are still alive; that it was delivered to him as being said testimonio; and to be used as such in the trial of said cases; that he has never seen or heard of any other paper purported to be, or represented as being, said testimonio; & that he believes said paper to be now lost, so that it cannot be procured or produced in court on the trial of this case. And the court, having heard the testimony of said witness, ruled that a sufficient predicate had been laid thereby to authorize the introduction of secondary evidence of the contents of said Zarza title, under which plaintiff in this case claims. And therefore pl'ffs offered in evidence to the jury the following certified and translated copy from the general land office of the State of Texas of the original title to Pedro Zarza for eleven leagues of land, and the papers accompanying and archived with said original title, viz:

Orig. grant to Zarza, (translation.)

3d stamp 4 reales. Legalized for the states of Coahuila and Texas for the years 1832 and 1833.

LESSASSIER.

The party interested has paid into the receiver's office under
39 my charge 4 reales, the value of the above stamp.

WILLIAMS.

To the alcalde of the town of Austin:

The citizen Robert M. Williamson, attorney of the citizen Pedro Zarza, a resident of the town of Aldama, in due and legal form, with the necessary assurances, present myself before you, and represent that my principal having obtained the right to eleven leagues of land by virtue of a sale made to him by the supreme government of the state, and executed to him on the 21st of May, 1830, in conformity with the 24th of the colonization law of the state of the 24th of March, 1825, as will appear upon reference to the original document hereunto annexed, issued

at the office of the secretary of state of the aforesaid supreme government, and it suiting the purpose of my principal to take the lands in his name, in distinct places, I pray you, in justice, to be pleased to order that a title of possession be given to me, individual, of eleven leagues of land, in the following form, that is to say: Six leagues on the San Javiel Creek, where Williamson's Creek joins the San Javiel; four leagues on the right margin of the river Brazos, below and adjoining the 8 leagues of land of Ignatio Galindo; and one league on what is called Cow Bayou, and they are situated within the contract of the empresarios Austin and Williams, they giving their approbation. I also pray that you will be pleased to order and have done whatever may be necessary in the matter conducive to the interests of my principal, with the understanding that I offer to cultivate the same in conformity with the provisions of the law, and to comply with all other requisitions of
40 the same. Therefore I pray that you will be pleased to attend to this petition, in which I will receive favor.

TOWN OF AUSTIN, *September* 28, 1833.

TOWN OF SAN FELIPE DE AUSTIN,
October 1*st*, 1833.

The petition being presented and admitted, the prayer of it is granted; it will be laid before the empressarios, Messrs. Austin and Williams, for their opinion in the matter; and their approval obtained, the scientific surveyor, Francis W. Johnson, will proceed to execute the surveys of the eleven leagues applied for by the attorney of the citizen Pedro Zarza, so that with them the certificates, and the classification which he shall make in conformity with the law, which will be annexed to the original document referred to, upon which the proper title will be issued. Thus I order, and sign it.

LESASSIER.

TOWN OF SAN FELIPE DE AUSTIN,
October 1*st*, 1843.

In conformity with the 9th article of the contract which we have ratified with the supreme government of the state of Coahuila and Texas, and the provisions, on the additional article of instructions to commissioners, dated April 25, 1830, we hereby give our consent and approbation to the possession being given of the eleven leagues of land to the attorney of Pedro Zarza, for which he has applied in his
41 petition, the same being vacant.

SAMUEL M. WILLIAMS,
For Himself, and as Attorney of his Partner.

To the alcalde and commissioner:

Those lands which I have surveyed for the attorney of Pedro Zarsa, the citizen R. M. Williamson, are situated in the following form, to wit: Six leagues on the San Javiel, and embraces the point where what is called Williamson's Creek enters the said Javiel on its left margin; four leagues on the right margin of the Brazos River, below and adjoining the land of Ignatio Galindo; and one league on what is called Cow Bayou, and adjoining the land surveyed for Juan Jose Acosta.

The limits, lines, and corners of the first mentioned survey of six leagues are as follows· Beginning at a stake for the south or S. E. of a survey of eleven leagues of land made for the citizen Miguel Davila, and

which is situated on the right margin of the river San Andreas, from which stake, S. 20° W. 382 v's, there is a mesquit tree 8 inches in dia.; from thence S. 20° W. 10,909 v's, where set a stake for the 2nd corner, crossing the San Javiel and a small creek called Pecan Creek, as will be seen in the map; from said stake thence N. 70° W. 13,750 v's, where set a stake for the third corner; from this place, on a line N. 20° E. 10,909 v's, to the north or northwest corner of the aforesaid land; from this place, thence S. 70° E., following the line of said land,
42 to the place of beginning, and containing an area of 150,000,000 of square varras of land, or which is equal to six leagues of land, bounded on the N. E. by the aforesaid land, and on all other sides by vacant land, and contains, according to my knowledge and understanding, one league of arable and five leagues of pasture land, and the figure thereof is shown in the plan or map which accompanies this.

The limits, lines, and landmarks of the second survey of four leagues are as follows: Beginning at the lower corner of the aforesaid land of Ignacio Galindo, which is a stake on the right margin of the Brazos River, from which a mulberry, 6 inches in dia., bears S. 5° W. $3\frac{8}{10}$ v's, and a hackberry, 8 inches in dia., bears N. $63\frac{1}{2}$° E. $8\frac{4}{10}$ v's; from thence S. 60° W., following the lower line of said land, 19,330 v's, where set a stake for the second corner, from which a hackberry, 6 inches in dia., bears N. $18\frac{1}{2}$° E. 59 v's., and a mulberry, 5 inches in dia., bears N. 12° E. 60 v's; from thence S. 28° E. 5,000 v's, where set a stake for the third corner, from which a mesquit, 6 inches in dia., bears S. 39° E. 30 v's, and another mesquit, 5 inches in dia., bears S. 63° E. 28 v's; from thence N. 62° E. 21,030 v's, to the aforesaid Brazos River, where set a stake for the fourth corner; from thence up the river, with its meanders, to the place of beginning, and contains an area of 100,000,000 of square varas, or which is equal to four leagues of land, and contains, to the best of my knowledge, one league of arable & three leagues of pasture land; the figure thereof is shown in the map which accompanies this.

The limits, lines, and corners of the third survey of one league of land is as follows: Beginning at the west or northwest corner of the survey of two leagues of Juan Jose Acosta, which is a stake, from which
43 an elm, 5 inches in dia., bears N. 14° E. 2 v's, and a mulberry, 6 inches in dia., bears S. $64\frac{1}{2}$° W. 12 v's; from thence S. 62° W. 10,000 v's, to a stake, set in the prairie for the 2nd corner; from thence S. 28° E. 5,000 v's, where set a stake for the third corner; from thence N. 62° E. 10,000 v's, where set a stake on the line of the aforesaid land; from thence N. 28° W., following said line, 5,000 v's, to the place of beginning, and contains an area of 25,000,000 of square varas, or which is equal to one league of land, and, to the best of my knowledge, contains four labors of arable and 21 labors of pasture land; and the figure thereof is represented in the map which accompanies this.

F. W. JOHNSON.

[Third stamp, two reales; stamp for the years 1830 and 1837.]

EXCELLENT SIR: The citizen Pedro Zarza, a resident of the town of Aldama, pertaining to the state of New Leon, with due respect to your excellency, would represent that wanting lands for stock-raising and agricultural purposes, and being desirous of the augmentation and progress of the state, I pray that your excellency would be pleased to grant me, by the way of sale, eleven leagues of the unappropriated lands in the department of Texas, together or separate, or in whatever

may be most conducive to my interests, hereby offering to settle
44 . and cultivate the same in the manner and form provided by the law; and I pray that your excellency will be pleased to concede to me, for the payment of the value of said leagues, the terms which the aforesaid law prescribes; therefore I ask and pray that your excellency will be pleased to accede to this my petition, in which I will receive favor.

PEDRO ZARZA.

LEONA VICARIO, *May* 18, 1830.

LEONA VICARIO, *May 21st*, 1830.

In conformity with the 24th article of the colonization law of the 24th of March, 1825, I authorize the sale to the petitioner of the eleven leagues of land which he applies for in the vacant territory of the state, in the place which he may point out. The constitutional alcalde of the jurisdiction, to which the lands that he asks for belongs, will put him in possession of said leagues, and issue the proper title, previously classifying the quality of the aforesaid lands, so as to ascertain the amount to be paid to the state, for the payment of which he is allowed the time prescribed in the 22nd article of the aforesaid law. A copy of his petition and this decree will be given to the party interested at the secretary of state's office, so that upon application with it to the commissioner it may have the desired effect.

Viesca: SANTIAGO DEL VALLE,
Secretary.

A copy of the original on file in the archives of secretary's office in my charge, to which I refer, and from which it was taken by order
45 of his excellency the governor.

Leona Vicario, May 27th, 1830.

SANTIAGO DEL VALLE,
Secretary.

Zarza to McKinney—poxc. att.

In the town of San Pedro, of (town) Aldama, the head of the district, in the state of New Leon, one of the Mexican federation, on the 14th day of January, 1831, before me, the citizen Manricio de los Santos, 1st constitutional alcalde of said town, and president of its illustrious ayuntamente, and assisting witnesses, with whom I act, in default of a notary public, there being none within these limits, besides those instrumental witnesses hereinafter named, appearing, in his proper person, the citizen Pedro Zarza, a resident of this vicinity, whom I declare to know, who says that, by these presents, he agrees to give & confers all his power, full, ample, or whatever may be legally necessary, or that can or may be required, & shall be of value, to Mr. Thomas F. McKinney, a native of Kentucky, and actual resident of the state of Coahuila and Texas, special that he may in his name, and representing his proper person, actions, and rights, to represent, execute, and fulfill, literally, the contents of the conditions, and clauses which he has instituted and communicated, in the following form:

1st. That he can suspend & recover the power which he gave in Bexar to M. B. Menard, to take possession for him of eleven leagues of land, which the governor of the state of Coahuila and Texas, in accordance with the colonization law of said state, conceded to him, by vir-
46 tue of sale in the department of Bexar; which in case of Men-

ard not having taken possession of then, then McKinney can apply to the commissioner, with said concession, and to ask in due form to issue the proper titles, and that he put him in possession of the aforesaid leagues, or of those of which possession has not been taken by the aforesaid Menard.

2nd. That he gives to him the power that he may alienate said eleven leagues of land, making it appear judicially, in what price, and the class to whom he has sold them.

3d. That they are agreed in that McKinney shall pay to the government the impost for the lands, according to the colonization law, and also the surveyor's and commissioner's fees; and all other costs incurred in this business shall be deducted from the sales of whatever there may be, and the nett proceeds thereof shall be divided equally between the grantor & McKinney, and the part thereof which pertains to me to be in money or goods in Matamoras, at those prices that they can be bought for.

4th. That should the aforesaid McKinney wish to become interested to take any or all of the eleven leagues after he has already possession of them, he can do so, he making his intention appear judicially, pointing out which, and the lines thereof of those which he takes, for should the same exceed the half of the eleven leagues, for the excess thereof he shall pay at the rate of two hundred dollars for each league, free of all costs, which he may have had to make; and in case of those which McKinney takes should not equal the half of the eleven leagues, he will have to pay, deducting the costs he has already had, from
47 the produce thereof, equal to the number of those which he may have taken.

5th. That for any cause whatever, he should not be able to effectuate a sale of said leagues of land, and if McKinney should deem proper to divide any of said land, for the costs of which he shall be responsible in no part thereof, will he be compensated by me.

6th. That McKinney can recover the authority which is given to him by this power of attorney, for himself and others, as may best suit him.

By virtue of which, and using the powers of all the faculties inserted in this power, and besides those annexed, incident and pertaining, and without which by default of any clause requisite or other motive herein not expressed & given by insertion, let the same have most favorable operation, and the same is herewith given by the grantor, with free, full, and general administration in due form, and with authority to pass judgment, to make oath, and to substitute in the person or persons, which for the well-being he shall have in relation to all, in due form, and for the security and guarantees of this power, the grantor obligates himself and property, present and future, and with them he submits to the law, and the jurisdiction of the judges and justices of the Mexican federation; and specially to those of the state to which belongs his residence, that they may force and compel him to all aforesaid, by all the rigors of the law, as though a definitive judgment of a competent court had intervened, having the force of a cause adjudged, and consented, and without appeal; he renounces his proper privileges, domicil, and residence with all the general laws of form.

In testimony of which he grants and signs, there being as wit-
48 nesses the citizens Jose De Amaya, Jose Manuel Flores, and Jose Antonio Ortegon, present & residents, to which I certify.

JOSE MANRICO DE LOS SANTOS.
PEDRO ZARZA.
Assistant, MELCHIOR DE LOS SANTOS.
Assistant, CARLOS VILLEREAL.

This testimonio agrees with the original which remains in the public archives, in my charge, to which it is returned; in faith of which I give this presents in four useful leaves of the paper of the corresponding stamp to the party interested, (grantor,) on this day of its date thereof. There were witnesses to see it transcribed and corrected truly and faithfully, the same as aforesaid, acting in the form as aforesaid, to which I certify.

JOSE MANRICO DE LOS SANTOS.
Assistant, MELCHOR DE LOS SANTOS.
Assistant, CARLOS VILLEREAL.

McKinney to Williamson—pow. att'y.

In the town of San Felipe de Austin, on the 5th day of the month of April, 1833, before me, the citizen Luke Lessassier, the only constitutional alcalde of this town, appears the citizen Thomas F. McKinney, who says that, by virtue of the authority conceded to him by this power of att'y, he substitues in favor of the citizen Robert M. Williamson, a resident of this town; he binds, the property bounden in said power, authorizes the substitution in due form, that he may in use of the rights and actions of the principal, that he may act with full liberty, the same as the substituting principal could have done; and in faith of which he signs with me, the aforesaid judge, and before those of my assisting witnesses, with whom I act according to law, to which I certify.

THOMAS F. McKINNEY.
LUKE LESSASSIER.
Assisting witness, S. H. JACK.
Assisting witness, J. H. KUYKENDALL.

Orig. title to Williamson, att'y for Zarza, (transl.)

THE TOWN OF SAN FELIPE DE AUSTIN:

On the 16th day of the month of October, 1833, I, the citizen Luke Lessassier, constitutional alcalde of this town and its muncipality, in using the authority which the supreme government of the state has conferred on me by a decree dated in the city of Leona Vicario, on the 21st day of May, 1830, and in attention to the sale authorized by said supreme government in favor of the citizen Pedro Zarza, a resident of the town of Aldama, of eleven leagues of land, as appears from the superior decree of sale, dated in the aforesaid Leona Vicario, the aforesaid 21st of May, 1830, presented by his attorney, Robert M. Williamson, set in page three, and others subsequent, of these proceedings, and in accordance with the superior order of his excellency the vice-governor, dated Jan 29th, of this present year, circulated by the chief of this department on the 19th of February last, declaring null the provisional decree of the supreme government of this state, relating to their citizens to whom land had been granted not being permitted to take possession of their land until reservations should have been made by the commissioner general of the nation; and inasmuch as none of those eleven leagues selected by the interested party are at any of the points or places ceded to the federal government by the aforesaid order, and in view of the approbation granted by the empressarios, Messrs. Austin and Williams, on page 1st, and the following of these proceedings, the said lands being situated within the limits of the contract of the aforesaid empressarios:

In conformity with the colonization law of the state of the 24th of March, 1825, and in the name of the state, I confer upon, and put the aforesaid attorney of the citizen Pedro Zarza, in real, actual, corporal, and virtual possession of eleven leagues of land, being the same which he applied for, and was sold to him by the government, on the San Javiel Creek, the river Brazos, and Cow Bayou, which situation, lines, boundaries, and corners being shown in the field-notes made by the principal surveyor, citizen Francis W. Johnson, and found on pages 2 and following of this instrument, the figure of which is represented in the map herewith annexed; the classification of the aforesaid lands, according to the aforesaid field-notes and judgment of the surveyor, being two leagues and four labors of the arable class, and eight leagues and twenty-one labors of pasture land.

I, the aforesaid alcalde and commissioner, by virtue of the authority vested in me by the law, in accordance with the classification, do declare that the amount to be paid to the state is one thousand two hundred and eight dollars, according to the provision of the 24th article of the aforesaid law of colonization of the 24th of March, 1825, and on the terms designated in the 22nd article of the same, under the penalties therein established, being notified that within one year he shall construct fixed and permanent land-marks at each angle of the land; that he shall cultivate the same in conformity with the provisions
51 of the aforesaid law, and scrupulously comply with all which is in it, and other enactments on the subject.

Therefore, in using of the authority that is conceded to me by the aforesaid decree of the supreme government of the state, by the law and consequent instructions which guide me, I issue the present title, and order that a certified copy be taken and delivered to the party, that he may possess, use, and enjoy the land which has been sold to him, his children, heirs, and successors, or whoever of him or them may become entitled to the same, or their rights represent; for such is the will of the state.

Given in the said town of San Felipe de Austin, on the day and date above written, which I sign, with assisting witnesses, in accordance with the law.

L. LESSASSIER.
Assisting witness, C. C. GIVENS.
Assisting witness, ——— ———.

GENERAL LAND OFFICE,
Austin, June 8th, 1858.

I, Edward Lynn, Spanish clerk in said office, bonded and sworn, certify that the foregoing is a correct translation of the original title to R. M. Williamson, attorney of Pedro Zarza, on file in said office.

Interlined, 3d page, 22nd line, "survey;" 4 p., 18th, "mulberry;" 5th p., 10th line, "10,000;" 6th p., 13th line "of;" do., 26th, "22nd article of;" do., 30th line, "viesca;" "Santiago del Valle, sec't'y;" 9th p., 18th line, "default of;" 12th p., 6th line, "citizens;" do., 10th line, "eleven leagues."

EDWARD LINN,
Spanish Clerk.

52 GENERAL LAND OFFICE, *State of Texas:*

I, Francis M. White, commissioner of the general land office of said State, certify that Edward Linn is Spanish clerk in said office, bonded & sworn, and that his acts, as such, are entitled to full credit.

In testimony of which I hereunto set my hand and caused the seal of said office to be affixed, at the city of Austin, this the 12th day of June, A. D. 1858.

[L. S.] FRANCIS M. WHITE.

And the defendants objected to the introduction of said certified copy—

1st. Because it does not appear to be a copy of an authentic instrument.

2nd. The said original in the land office, as appears by said copy, having but one assisting witness to the extension of title by the commissioner, Luke Lessassier.

Whereupon the plaintiff, by the permission of the court, introduced, as a witness, James Browne, who stated that he was Spanish clerk, or translator of the Spanish language, in the general land office; that he had brought with him into court a book from the gen'l land office, which had its place among the archives of said office: that said book contained what was known and recognized in the general land office as the original title or protocol of the Pedro Zarza eleven-league title, and, having examined the certified copy hereinbefore set out, declared that said certified copy contained a substantial translation of the original title
53 as contained in the book of titles aforesaid to Pedro Zarza, by his attorney, R. M. Williamson, for eleven leagues of land; that said book was filed in the land office about the year 18 , and had since that time, as he is informed & believes, remained among the archives and as an archive in the general land office of Texas.

And thereupon the plaintiff introduced Thomas F. McKinney, who said as follows: That he had examined the book of titles handed to him, (the same spoken of by the witness Browne,) and recognized the handwriting of Luke Lessassier, named at the foot of the title, and that he also recognized the handwriting of C. C. Givens, the one witness assisting the said Luke Lessassier; that both the said Luke Lessassier and C. C. Givens were dead; that in the year 1833, the date of the title to Pedro Zarza, Luke Lessassier was alcalde of the municipality of Austin; that the signature of said Luke Lessassier and C. C. Givens to said title are the true and genuine signatures of the parties named; that he knew the handwriting of Luke Lessassier and C. C. Givens; that he had seen them write their names frequently, and knew the signatures in said book of titles and signed to the Pedro Zarza title were the true and genuine signatures of the said Luke Lessassier and C. C. Givens; that he knew Francis W. Johnson; that at the date of said Zarza title, viz., 1833, and at the time the survey of the lands granted by said title was made, he was principal surveyor of the colony of the empressarios Austin and Williams; that the signature of the said Francis W. Johnson was well known to him, witness; that he had often seen him write his name; that they, witness, F. W. Johnson, R. M. Williamson, Luke Lessassier, C. C.
Givens, and Sam. M. Williams, all lived in the same village for
54 many years, and the handwriting of all the parties named was well known to witness; that the signatures of Francis W. Johnson signed to the survey & field-notes of the said Zarza title is the true and genuine signature of the said Francis W. Johnson; that he knew Pedro Zarza, the grantee in said title; that he was a citizen of the Mexican government; that he appointed him (witness) his (Zarza's) attorney to obtain the concession and designate the lands that might be

granted; that he knows the signature of Pedro Zarza; that he had often seen him make his signature; that the power of attorney given to witness by the said Zarza, the testimonio whereof is set out in the instrument No. 1 hereinbefore embraced, was in fact executed in his presence, and a testimonio thereof handed to witness, which is now embraced in said document No. 1; that he held said testimonio, and, under and by virtue of the power therein granted by the grantor or maker, Pedro Zarza, substituted R. M. Williamson as the att'y of the said Zarza, to obtain the grant of lands, designate them, and afterwards to sell them, as fully as witness could have done under his power of attorney from Pedro Zarza, (a copy of which said substitution is embraced among the papers of document;) that witness did have the power of attorney (testimonio) from Zarza, and did afterwards substitute R. M. Williamson; that the signature of Thomas F. McKinney to said substitution of R. M. Williamson, as it appears in the book of titles, is the true and genuine signature of the said McKinney; that he was also well acquainted with the signature of Santiago Del Valle, and has often seen him write, and has also corresponded with him, and that he knows that the signature of the said Del Valle, where it occurs in said title in the book of titles aforesaid, is the true and genuine signature of the said Del Valle.

55 And therefore the defendants object to the introduction of the paper, as proved, as a title to Pedro Zarza for eleven leagues of land:

1st. Because the same purports to be the matrix or protocol of the title, and on its face appears never to have been completed or executed.

2nd. Because there is no evidence that the title was ever delivered, or that a testimonio had ever issued upon the same.

Which objections were overruled by the court.

And the court, having ruled that the testimony of said McKinney was sufficient to prove up and authenticate, and did prove up and authenticate, the said title extended to Pedro Zarza, by his attorney, R. M. Williamson, and the accompanying papers, embracing the concession and others preceding the extension of title of possession, whereupon the said translated copy of the Pedro Zarza title, as hereinbefore embraced, and as certified from the general land office, was read in evidence to the jury.

And during the further progress of the trial the plaintiff offered in evidence a deed from R. M. Williamson to Edward Hanrick, dated 30th June, 1851, for five leagues of land, which is here set out.

56 *Zarza, by Williamson, att'y, to Hanrick—deed.*

Know all men by these presents that I, Pedro Zarza, acting by my duly constituted att'y in fact, Robert M. Williamson, for and in consideration of the sum of nine hundred and nine dollars and ninety cents, to me in hand paid, through my said attorney, have given, granted, bargained, and sold and conveyed, and do by these presents give, grant, bargain, and sell and convey, unto Edward Hanrick, of the county of Montgomery, & State of Alabama, all those two certain tracts of land granted to me by the state of Coahuila and Texas, now lying in the State of Texas, and situate and bounded as follows, that is to say:

The first, lying on the right bank of the Brazos River, below and adjoining a tract of land surveyed for Ignacio Galindo, beginning at the lower corner of said tract, at a stake on the right bank of the said river, from which a white mulberry, 6 inches in diameter, bears south 5° west

$3\frac{8}{10}$ varas, and a sycamore, 8 inches in diameter, bears north $63\frac{1}{2}°$ east $8\frac{4}{10}$ varas; thence south 60° west, and, following the lower boundary line of the aforesaid tract, 19,330 varas, to a stake, for the second corner, from which a sycamore, 6 inches in diameter, bears north $18\frac{1}{2}°$ east 59 varas, and a white mulberry, 5 inches in diameter, bears north 12° east 600 varas; thence south 28° east 5,000 varas, to a stake, for the third corner, from which a mesquit tree, six inches in diameter, bears south 39° east 30 varas, and another mesquit, 5 inches in diameter, bears south 63° east 28 varas; thence north 72° east 21,730 varas, to the said river Brazos, to a stake, for the fourth corner; thence, following the meanders of the said river, to the point of beginning, containing 100,000,000 square varas, or 4 sitios or square leagues of land, of which one sitio is of the class of temporal or arable land, and three sitios of the class of pasture land.

57 The second tract, lying on the creek known as Cow Bayou, or Cow Creek, adjoining a tract of land surveyed for Juan José Acosta, beginning at the west or northwest corner of the said last-named tract, at a stake, from which an elm tree, 5 inches in diameter, bears north 14° east 2 varas, and a white mulberry, 6 inches in diameter, bears south $64\frac{1}{2}°$ west twelve varas; thence south 72° west 10,000 varas, to a stake, for the second corner; thence south 28° east 5,000 varas, to a stake, for the third corner; thence north 72° east 10,000 varas, to a stake, on the boundary of the aforesaid tract; thence north 28° west, following the said boundary, to the point of beginning, containing 25,000,000 square varas, or one sitio or league of land, of which 21 labors are pasture land, and 4 labors are temporal or arable land; both of the said tracts being fully described in the title issued therefor to me, through my said attorney, by Luke Lessassier, sole constitutional alcalde of the town of San Felipe de Austin, and special commissioner for this purpose, on the seventeenth day of October, A. D. 1853, and in the proceedings had preliminary thereto.

To have and to hold the said two several tracts of land, with all the appurtenances, to him, the said Edward Hanrick, his heirs and assigns, to and for their own proper use and behoof, forever.

In testimony whereof I have hereunto, by my said attorney in fact, set my hand and affixed my seal, at Galveston, in the said State of Texas.

PEDRO ZARZA, [L. S.]
By his attorney in fact, R. M. WILLIAMSON.

Signed, sealed, and delivered in presence of—
JOHN S. JONES.
I. P. COLLINS.

58 THE STATE OF TEXAS, *County of Falls:*

Before me, L. B. Barton, clerk of the county court of said county, personally come and appear John S. Jones, whose name is subscribed to the within instrument bearing date 27th day of June, A. D. 1851, with I. P. Collins, who signed also as a witness, and, after the said John S. Jones being first duly sworn, saith that he was present and seen the said R. M. Williams signe the same, & heard and acknowledge in in my presenents & in the presents of the other witness, I. P. Collins; that he did it for all the purposes and considerations therein contained and set fourth; all of which I certify to.

To witness my hand and seal of the county court of Falls County, at office in the town of Marlin, this the 28th day of April, 1854.

[L. S.] L. B. BARTON, *C. C. F. C.*

THE STATE OF TEXAS, *County of Falls:*

I, the undersigned, L. B. Barton, clerk of the county court of said county, do certify that the foregoing & within deed [deed] of conveyance by Padro Zarza to Edward Hanrick was filed for record in my office on this 28th day of April, 1854, at 9 o'clock a. m., and is duly recorded by me in book B, on pages 135, 136, & 137, on this the 28th day of
59 April, 1854.

Witness my hand and seal of the county court of said county, at office in the town of Marlin.

[L. S.] L. B. BARTON, *C. C. F. C.*

60 THE STATE OF TEXAS, *County of Galveston:*

Before me, Oscar Farish, clerk of the county court of Galveston County, this day appeared John S. Jones, to me known, who, being sworn, deposes and says that Pedro Zarza, by his attorney in fact, R. M. Williamson, signed and executed the annexed instrument of writing in his presence, and that he, at the request of the said Pedro Zarza, by his said attorney in fact, R. M. Williamson, subscribed his name as a witness thereto. The said instrument bears date the twenty-seventh day of June, A. D. 1851.

In witness whereof I hereto subscribe my name and affix seal of said court this 13th day of February, A. D. 1868.

OSCAR FARISH, *Clerk.*

THE STATE OF TEXAS, *County of Falls:*

I, A. M. Attaway, clerk of the county court of Falls County, hereby certify that the foregoing and annexed instrument was filed in my office for record on the 3d day of March, 1868, at 10½ o'clock a. m., and was duly recorded on the 4th day of March, A. D. 1868, at 11½ o'clock a. m., in book G of records of deeds, on pages 255, '6 & '7.

Witness my hand and the seal of the county court of Falls County, at office in the town of Marlin, on the 4th day of March, A. D. 1868.

A. M. ATTAWAY, *Clerk C. C. F. C.*

61 To the introduction of which the defendants objected, because there appeared upon the paper the following endorsement, showing how it had been delivered to the plaintiff, to wit:

"Edward Hanrick, compl't, vs. R. M. Williamson, def't chancery.
"Filed June 30, 1851.

"JAMES LOVE, *Clerk.*

"I, James Love, clerk U. S. district court, certify that in obedience to the decree entered on this day in the above cause, that I delivered the within deed to complainant, June 30, 1851.
"Attest: JAMES LOVE, *Clerk.*"

And that the plaintiff must first produce the decree by which he claims the deed, as a muniment of his title before said deed could be read. Whereupon, to avoid the objection, the plaintiff offered in evidence in connection with the deed aforesaid, a paper purporting to be a copy from the record of Falls County of a decree in the United States district court for the eastern district of Texas, at Galveston, in the case of E. Hanrick vs. R. M. Williamson; which paper is as follows:

Copy of decree dist. court at Galveston.

The United States of America, eastern district of Texas, at Galveston, in chancery.

EDWARD HANRICK, COMPLAINANT,
vs.
ROBERT M. WILLIAMSON.

This cause coming on to be heard at this term on bill, answer, & exhibit, and argued by council, and thereupon it was ordered, adjudged, and decreed by the court that it be declaired Pedro Zaraza, by the said defendant, as his attorney in fact, contracted and agreed with the
62 said complainant, in the year 1833, to sell to him, the said complainant, and one Asa Hoxie, eleven leagues of land described in the bill of complaint, for the sum of two thousand dollars, and consequently contracted and agreed to sell the two tracts more particularly described in the said bill, containing together five leagues of land, for the proportionate sum of nine hundred and nine dollars and nine cents, and that the said two tracts consist of three leagues and twenty-one labors of pasture land and one league and four labors of arable land, for which the said defendant is now bound, in the name and stead of his said principal, to make a good and sufficient conveyance to the said complainant, and it is further ordered, adjudged, and decreed that the said conveyance tendered by the said defendant accordingly, in and by his answer herein, he delivered to the said complainant, and that the said complainant pay the costs of this cause, to be taxed by the clerk.

UNITED STATES OF AMERICA, *Eastern District of Texas:*

I, James Love, clerk of the dist. court of the United States for the eastern district of Texas, certify the foregoing to be a true copy of the decree of said court in the case in chancery therein of Edward Hanrick against Robert M. Williamson, entered upon the minites on the 30th day of June, A. D. 1851.

In testimony whereof I hereunto set my hand and affix the seal of said court, at the city of Galveston, this twelfth day of September, A. D. 1857.

JAMES LOVE, *Clerk.*

63 I, Sam. D. Barclay, clerk of the county court of Falls County, do hereby certify that the above and foregoing instrument of writing was filed in my office for record on the third day of June, 1859, and duly recorded the same day—this day and date last above written.

S. D. BARCLAY, *Clerk C. C. F. C.*

STATE OF TEXAS, *County of Falls:*

I, A. M. Attaway, clerk of the county court of Falls County, do hereby certify that the above and foregoing is a true and correct copy of decree and certificates from the records of Falls County, Texas, book B, pages 428 & '9.

Witness my hand and seal of said court, at office in the town of Marlin, this the 30th of December, A. D. 1868.

[L. S.] A. M. ATTAWAY, *C. C. C. F. C.*

To the introduction of which the defendants objected; and the court having heard the objections overruled the same, except so far as to re-

quire the plaintiff by other evidence to establish the existence and contents of the decree aforesaid.

And thereupon the plaintiff offered to introduce evidence to establish the destruction of the records of the United States court at Galveston, embracing the period of the decree above named. To which the defendants again objected, because no motion or affidavit of the plaintiff
64 had been made or filed and docketed, and no notice of the same to the adverse party had been given, as required by the law of Texas, to entitle him to prove the loss or destruction of the record in question. (See Paschal's Digest of the Laws of the State of Texas, articles 4969 & 4970, page 831.) Which objection the court sustained; to which ruling of the court the plaintiff excepted at the time, for the following reasons:

1. Because said articles of said digest of the laws of Texas were not applicable to the question before the court; and,

2nd. Because said articles of said digest were applicable only in a case where it was sought to supply the records or file papers in the court, and of the court where the case in which such lost records were sought to be used was pending in the court and could only be resorted to during the pendency of the cause, and did not apply to the lost records of a court different to the one where said pending cause was to be tried; and,

3d. Because to attempt to supply said lost record in the mode and manner pointed out in said articles of said digest, placed the plaintiff in the position of seeking to supply by a proceeding in this court the lost records of the district court of the United States for the eastern district of Texas, at Galveston, which under the law was in no wise allowable.

And thereupon E. J. Gurley, attorney in fact and at law, for the plaintiff, filed the following motion and affidavit.

Gurley's affidavit.

E. HANRICK, ADM'R,
vs.
DUTY ET AL.

And now comes E. J. Gurley, the att'y of record, and agent and att'y in fact of the plaintiff in this case, and, being duly sworn, doth depose and say that he is informed and believes that the records and decrees of the dist. court of the United States for the eastern district of
65 Texas, at Galveston, have been lost and destroyed by being burnt, at the city of Houston, in the State of Texas, whence said records had been removed for safe-keeping; that he is informed that they (said records) were so destroyed on or about the day of , 186 . Affiant being further sworn, he presents herewith to the court a certified copy of what purports to be a decree rendered by said district court, and recorded in the office of the county clerk of Falls County, Texas, on the 3d day of June, 1859; that he is informed and believes that the said certified copy of said decree is a true & correct copy of the original decree rendered by the aforesaid court, on or about the 30th day of June, 1857, and recorded as aforesaid in the county of Falls, Texas; and he is further informed & believes that the said decree was correctly and truly recorded on or about the 3d day of June, 1859, in the county clerk's office of Falls County, was a true and correct record according to law of the original decree rendered by the said district court of the United States, at Galveston, on the said 30th of June, 1857.

Affiant further swears that it is impossible to procure a copy of said decree from the records of said court at Galveston, because of the destruction of said records.

And affiant further swears that he is informed and believes that the original decree, a copy of the record whereof he presents to the court, was destroyed by being burned, at the time of the burning of the records, decrees, &c., at Houston, as aforesaid in this affidavit.

E. J. GURLEY.

Subscribed and sworn to before me this 22nd day of January, A. D. 1869.

M. HOPKINS, *Clerk.*

Pl'ff's motion to admit copy of decree.

E. G. HANRICK, ADM'R,
vs.
E. DUTY ET AL.

66 And now comes the plaintiff, by attorneys, and moves the court that the certified copy of the decree accompanying the affidavit of E. J. Gurley, this day filed in this said cause, be received by the court according to law, as evidence on the trial of this cause as the contents of the lost and destroyed record mentioned in said affidavit, and to that end he moves that said destroyed records may, for all the purposes of this case, be supplied by the certified copy of said decree accompanying the affidavit of said E. J. Gurley. And he further moves that he be permitted to use said certified copy of said decree, as evidence of said decree, destroyed among the other records and decrees mentioned in the affidavit of said E. J. Gurley. And as in duty, &c.

GURLEY, CHANDLER & WALTON,
For Pl'ff.

Which was also objected to by the defendants—

1st. Because it was out of time.

2nd. Because it had not been docketed and notice given thereof to the adverse party.

3d. Because the statements made in the motion and affidavit are not a sufficient compliance with the statute to authorize evidence under the same.

Which objections being overruled by the court, the plaintiff was permitted to introduce evidence in relation to the existence, contents, and destruction of the decree in question.

And thereupon the plaintiff proved by E. J. Gurley, as follows: That he is the attorney and agent of the plaintiff, in Texas; that as such agent and attorney, in course of his business for the plaintiff, had use for the decree of the dist. court of the United States for the eastern dist. of Texas, at Galveston, in the case of E. Hanrick vs. R. M. Williamson, being the same referred to in connexion with the deed of R. M. Williamson, att'y in fact of Pedro Zarza, heretofore copied in this bill of exceptions, and to prevent repetition is here referred to; that he
67 applied in person to the clerk of said court, at Galveston, for a copy thereof; that he did not obtain said copy; that it was understood from general reputation that the records of said court were burned during the war, at the city of Houston, where they had been re-

moved for safe-keeping at the time the federal forces were in front of Galveston; that he did not know of his own knowledge that said records were burned, but that general rumor said they had been burned.

The plaintiff then introduced W'm B. Forde, who stated that he had also applied to the clerk of said court for copies of decrees which had been rendered in said court, but that he did not obtain them; that he understood from general rumor and repute that the most of the records of said court had been lost; that he did not know what part of the records of said court had been saved, nor had he understood from general rumor what parts had been saved.

The plaintiff then introduced C. S. West, who states that he is a lawyer; that professional business required him to search the records of the said court; that in person he went to Galveston and applied to the [the] clerk thereof for liberty to examine the records, but that the clerk furnished no records for his inspection; that the general reputation was that the records of said court had been destroyed by fire in the city of Houston, whither they had been moved during the war for safe-keeping; that they were burned, as he was and is informed by general repute, in the year 1862 or 1863, that the same general repute that informed him that said records were burned, informed him also that some one or more of the court dockets had been saved, but that on ap-
68 plication to the clerk for an inspection of said dockets, so said to have been saved, the said clerk failed to furnish them to him, and that though he had sought in every legitimate mode to obtain an inspection of said records, he had failed to accomplish the purpose.

Whereupon the plaintiff offered to read to the jury the copy from the records of Falls County, as the decree pronounced by the court in the aforesaid case of E. Hanrick vs. R. M. Williamson, in the United States district court for the eastern district of Texas, at Galveston, the same being before copied in this bill of exception, and is here referred to.

To the reading of which the defendants objected—

1st. Because no evidence had been given showing the former existence or contents of such decree, and the evidence to show the destruction of the records of the court at Galveston was incompetent & insufficient for that purpose.

2nd. Because the paper offered was but the copy of a copy in the 3d degree, and was not properly certified.

3d. Because the original copy of the decree, if in existence, is primary evidence of the existence and contents of the decree in the case of E. Hanrick vs. R. M. Williamson, in the U. S. dist. court at Galveston, and the non-production of the same has not been accounted for.

Which objections were then and there sustained by the court; to which ruling the plaintiff excepted for the following reasons:

1. Because the existence of said decree had been sufficiently established.

2. Because the loss of the records containing said decree had been sufficiently established; and

3. Because said certified copy of said decree from the county
69 of Falls was and is admissible to prove the contents of the lost decree.

4. That there are no degrees in secondary evidence; and that if the original copy, recorded in Falls County, could be admitted in evidence, the certified copy from the record thereof was equally admissible.

5. That, after establishing the loss of the records containing said decree, any and all evidence was admissible to show the contents and purports of said decree, restricted only to the effect that the evidence might produce on the mind of the court and jury that any & all evidence that would convince the mind and inform it of the contents and purport of the decree was admissible.

And thereupon, during the further progress of the trial, the plaintiff offered in evidence, independently, the before-mentioned deed from Pedro Zarza, by his attorney in fact, R. M. Williamson, to E. Hanrick, dated 30th June, 1851, and which has heretofore been copied in this bill of exceptions, and is here referred to; said offer being (made) disconnected with and independent of the decree of the district court of the United States, eastern district of Texas, at Galveston, before referred to.

To the introduction of which the defendants objected—

1. Because the indorsement of the mode of delivery on the back thereof (which is heretofore copied in this bill of exceptions, and is here referred to) was evidence against the plaintiff, that the deed was based upon a decree of the court aforesaid, and delivered in pursuance thereof.

2. That the plaintiff, having offered to show that the deed was based upon the decree of the United States dist. court for the eastern dist. of Texas, at Galveston, was precluded from denying that it was made and delivered to him under a decree of said court.

70 3. That the deed having been made and delivered in pursuance of a decree of said court, said decree was a necessary muniment of his title, and must be produced or proven.

Which objections were sustained by the court; to which ruling the plaintiff excepted for the following reasons:

1. Because it appears from the face of the title that the power of sale rested in R. M. Williamson, attorney of Pedro Zarza, at the date of said deed, and that said decree did not confer power on Williamson, as att'y of Zarza, to make said conveyance, but that, in fact and in law, the power rested in the said R. M. Williamson to sell by virtue of the power of att'y to him from Thomas F. McKinney, att'y of Zarza, and by virtue of the extension of title to the said Williamson, att'y of Zarza, all of which appears, by reference to said powers and title, copied in this bill of exceptions.

2nd. That said decree does not form part of the chain of title of plaintiff's intestate, and that said decree is irrelevant and immaterial in the deraignment of title in behalf of pl'ff in this case.

3. Because where the right to sell is in a party, and an order or decree of court, ordering him to sell is rendered, and the sale is made, not under or by virtue of the authority of the decree, but by virtue of and under the authority with which the party is invested prior to the rendition of the decree, as was the case in the deed now before the court, then the decree is not material to the title of the vendee, but, on the contrary, is wholly immaterial, and constitutes no part of the chain of title.

4. Because the plaintiff in this case has a legal and valid title to the land in controversy, without regard to and independent of said decree, under all the facts and circumstances of this case apparent to the court.

71 5. Because the production of said decree, under all the facts and circumstances of this case, could and would only serve to

confuse the minds of the jury, and improperly raise false and immaterial issues to the prejudice of the plaintiff, with no corresponding advantage.

6. Because it appears to the court, as matter of law, and in evidence from the facts admitted, that the vendor, R. M. Williamson, att'y of Zarza, had authority to sell to the vendee, in the deed before the court, or to any other person, & because it appears from the face of said deed that the said R. M. Williamson, att'y of Pedro Zarza, duly exercised the authority with which he was clothed as an attorney in fact, and that said authority was full and complete, without drawing to him any power or authority from the said decree.

7. Because it is apparent to the court, as matter of law and fact, that the deed, the introduction of which is sought as evidence on this trial, is not founded or based on said decree, but is wholly independent thereof.

72 And during the further progress of the trial the plaintiff then offered a certified copy of a paper from the county records of Milam County, purporting to be a deed from R. M. Williamson to Asa Hoxie, which, with certificates, is here set out, viz:

Copy of deed—Williamson, att'y, to Hoxie.

REPUBLIC OF TEXAS,
County of Washington, July 28th, 1838:

Be it known this day, before Jno. P. Coles, chief justice, and, by virtue of office, notary public, duly commissioned and sworn, personally came and appeared Rob't M. Williamson, citizen of the county of Bastrop, to me personally known, acting as att'y in fact for Pedro Zarza, citizen of Aldama, and republic of Mexico, by authority set forth in the subjoined document, and certified copies of the original, now on file in the general land office in the city of Houston, who declared that in and for the consideration of two thousand and five hundred dollars, to him in hand paid by Asa Hoxie, the receipt whereof is hereby acknowledged and confessed, and acquittance therefor forever granted, he doth by these presents bargain, sell, grant, convey, and transfer, and set over to Asa Hoxie, with a full guaranty against all debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatever, (except such claims as may now or hereafter may become due and owing to the republic of Texas,) all that tract or tracts, parcel or parcels, of land, consisting of eleven leagues of land, described in the
73 subjoined certified copy of the archives of general land office in the city of Houston, lying and being situate on the west side of the Brazos River, to have and to hold to the said Asa Hoxie, his heirs and assigns, forever, by way of quitclaim from, for me, and my heirs and assigns, forever, the above-described parcel or parcels of land, which, for the want of a competent translator, are not fully set forth in this deed, hereby warranting and subrogating the said Hoxy in my stead in all things necessary touching the premises, and forever defending the same to the said Hoxy, his heirs and assigns, against any demands by myself, my heirs, or assigns.

Done and signed before me in Washington County, this 24th July, 1838.

The word "citizen" and "copy" and "for" interlined before signing.

R. M. WILLIAMSON.

WITNESSES:
W. H. SMITH.
THO'S H. BARRON.

REPUBLIC OF TEXAS, *Washington County:*

I certify that the foregoing instrument was executed before me this day and date before written.

JNO. P. COLES, *Chief Justice.*

The original of the foregoing instrument was presented for record this 27th July, 1838.

W. D. THOMSON,
County Recorder.

74 Testimonio del expediente formido parala possession, de unce sitios vendidos, porel supremo gobierno del estado at cinda duno Miguel Rubago, vecino del valle de Santa Rosa.

NACAGDOCHES, *4th de Euero de*, 1834.

STATE OF TEXAS, *County of Milam:*

I, W. D. King, clerk of the county c't of Milam County, do hereby certify that the foregoing pages is a true and correct transcript of the records now on file in my office, as taken from book B, vol. 1st, pages 340 and 341.

Given under my hand and official seal, at my office in Cameron, this the 23d day of April, A. D. 1860.

W. D. KING,
Clerk C. C. M. C.

To the introduction of which the defendants objected for the following reasons:

1. Because the paper is executed by R. M. Williamson for himself and not as attorney of Zarza.
2. Because it describes no land and names no grantee.
3. Because it is not properly authenticated for record.
4. If any land is described it is a different grant from that now sued for.
5. No predecate, as required by the statutes of Texas for the introduction of certified copies of records, has been laid by plaintiff.

75 Which objections were sustained by the court, and the plaintiff excepted for the following reasons:

1. Because each and every of the reasons advanced by the defendants are not allowable, and because the said deed, as offered, is competent evidence to prove title in this suit in the plaintiff's intestate.

The plaintiff, during the further progress of the trial in this cause, offered in evidence a deed from Pedro Zarza to Thomas F. McKinney, dated 23d day of Nov'r, 1832, a translated copy of which, as proven on the trial, is as follows:

Zarza to McKinney—deed.

[The state of New Leon—third stamp—two reales, for the years of 1832 & 1833.]

In the city of Monterey, capital of the state of New Leon, one of the United Mexican States, on the twenty-third day of November, 1832, before me, the citizen Antonio Chaves, third constitutional alcalde, and primary judge of this said city and its jurisdiction, and the instrumental witnesses hereinafter named, besides those of my assisting witnesses, with whom I act in default of a notary, there being none, personally

appears the citizen Pedro Zarza, of this jurisdiction, whom I declare to know, who says that he has decided to sell to the citizen Thomas
76 F. McKinney, a resident of the town of San Felipe de Austin, of the state of Coahuila and Texas, eleven leagues of land, which was granted to the presentor in accordance with the colonization law, in the department of Texas—he can select said leagues on the land that best suits him, provided a third party be not injured; and being desirous to carry forward this contract in the best manner and form required by law, well affirmed, which he declares that he sells, in public sale, to the said Thomas F. McKinney, to him, his heirs, or successors, all the right that he has to the said eleven leagues, in the same manner, terms, and conditions with which they were conceded to the grantor according to said colonization law, on all of which the purchaser is well informed; who can, by virtue of this document, select said eleven leagues on the land that best suits him, with the same charges and responsibilities that pertain to the grantor, according to said law, in such a manner that the purchaser becomes responsible to satisfy the value in which the eleven leagues were taxed, and all the costs and expenses that may arise for the surveys and possession, and other necessary expenses, according to the aforesaid law; so as the granter remains exempt from all responsibility in such a decree, that, if the government of Coahuila and Texas should revoke the concessions that it has made, the granter shall not be held to return the small and moderate price for which he has sold those eleven leagues, since he does not bind himself to the evictions, securities, and all the steps that the government may choose to take on account of the purchaser; who, as it has been
77 said, remains in full possession of the whole; and that the concession to the granter acts in his possession as if said leagues were granted to him; and moreover he confers full and ample power on him that he may sell in his name said lands, which now remains without force, since he can sell it by himself in case it suits him; and regard to the concession, he gives to him, by virtue of this document, the most formal transfer and delivery that is now in his power; in virtue whereof he abandons and withdraws himself from the rights that he, his heirs, had in said lands, and cedes, renounces, and transfers the whole to the purchaser; and that the price which they have agreed upon is that of ninety dollars, free from duty—which belongs to the purchaser, if they collect it in Texas—which sum the granter declares to have received in current money to his entire satisfaction, upon which he renounces the impediment of the non numerata pecunia proof, and satisfaction of its receipt, it being necessary to remark that the moderate price has been designated, for the reason that the charges and responsibilities that the granter had before now passes to the purchaser. And for the fulfillment of all herein stated, the granter binds his person & property, present and future, and with them he submits himself to the jurisdiction of the judges, especially to those of the state of Coahuila and Texas; he renounces the priviliges of domicil and jurisdiction, and the laws in his favor, with that of the general law of forms.

Therefore I grant and sign it, there being present, as instrumental witnesses, Don Miguel Nieto, the licentiate Valeriano Berrego, and Don Atanacio Velarde, and belonging to this jurisdiction, to which I
78 certify.

PEDRO ZARZA.
JOSE ANTONIO CHAVES.
Assistant witness, PABLO GARCIO.
Assistant witness, JOSE SIMON GONZALES.

He then offered in evidence a deed from Thomas F. McKinney to Edward G. Hanrick, adm'r of E. Hanrick, the plaintiff in this suit, dated day of , 1868; which is here set out, viz:

McKinney to Hanrick, ad'r—deed.

THE STATE OF TEXAS, *Travis County:*

Know all men by these presents that I, Thomas F. McKinney, for the considerations and purposes hereinafter expressed, have bargained and sold, and by these presents do bargain, sell, convey, and forever quitclaim, to Edward G. Hanrick, adm'r of the estate of Edward Hanrick, deceased, the following described real estate, to wit:

Five leagues of land, being a part of an eleven-league grant originally made by the government to Pedro Zarza, situated in Falls County, Texas, on the west side of the Brazos River, bounded and as follows, to wit: On the north, or upper side, by the eight-league block originally granted to Ignatio Galindo, and some smaller surveys;
79 on the west by small surveys and vacant land; on the south, or lower side, by the Manchaca grant; and on the east by the two-league block, originally granted to Juan Jose Acosta, and the Brazos River. For particular description by field-notes reference is made to the original grant to said Pedro Zarza, now on file in the general land office of Texas.

The considerations and purposes of this deed are as follows, to wit: I purchased from said Pedro Zarza his said eleven-league grant before the title was extended, but after the concession was made to him. I had from him a power of att'y to sell said eleven leagues of land, and to substitute any one else in my stead to do the same. In pursuance of this power I substituted R. M. Williamson, and the said Williamson conveyed the said five leagues of land herein conveyed to Edward Hanrick, deceased, and it now belongs to his estate. And I, the said Thomas F. McKinney, having long since received full consideration for said land, and as I parted with the title by virtue of my substitution of R. M. Williamson, do, by request, make this deed, thereby divesting, and intending to divest, myself of any and all title, legal or equitable, to said five leagues of land, and to vest the same, if any there be, in the said Edward G. Hanrick, adm'r of the estate of Edward Hanrick, deceased. All which I feel myself bound to do from the fact already stated, that I have long since received full satisfaction for said land, and the same now belongs, legally and equitably, to the estate of Edward Hanrick: To have and to hold to him, the said Edward G. Hanrick, adm'r as aforesaid, in fee-simple forever. And I, the
80 said McKinney, for myself, my heirs, and legal representatives, forever quitclaim, convey, & renounce said land, but without warranty, or giving recourse upon me, my heirs, or legal representatives.

In testimony of which I hereto set my hand and seal this the fifteenth day of January, anno Domini 1868.

THOMAS F. MCKINNEY. [SEAL.]

Attest:
E. J. GURLEY.
O. N. CULLEN.

To the introduction of which the defendants objected:

1. Because the deed was made to Edward G. Hanrick, the plaintiff in this suit, since the commencement of this suit.

2. Because Edward G. Hanrick at the time of acquiring said title was

United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Texas, at Austin, wherein Edward G. Hanrick, administrator of Edward Hanrick, deceased, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 25th day of October, A. D. 1869, and the seal of said circuit court.

[SEAL.] T. H. DUVAL, *U. S. Judge.*

Teste, with seal of court:

M. HOPKINS, *Clerk.*

86 (Indorsed:) 255. Edward G. Hanrick, adm'r of Edw'd Hanrick, vs. Joseph Neely, Rob't Moore, William Pierson, and Fielding Ruble. Citation in error.
Issued 25th Oct., 1869.

M. HOPKINS, *Clerk.*

Filed 14th December, 1869.

On this 1 day of Nov'r, A. D. 1869, personally appeared A. P. Blocker before me, the subscriber, clerk of the circuit court of the United States for the western district of Texas, and makes oath that he delivered a true copy of the within citation to John A. Green, attorney of record.

A. P. BLOCKER,
U. S. Marshal W. D. Texas.

Subscribed & sworn to this 1 day of November, 1869.

M. HOPKINS,
U. S. Circuit Court Clerk.

(Indorsement on cover:) No. 255. Edward G. Hanrick, administrator of Edward Hanrick, dec'd, plaintiff in error, vs. Joseph Neely, Robert Moore, William Pierson, and Fielding Ruble. W. Texas C. C. U. S.
Filed 23d September, 1869.

CHURCH PROPERTY.

526

191

282

SHELDON & SLASON

574

236

ADAMS & ALLEN.

Scale: 1 Inch=72 Feet.

MARBLE Co.

315

513

36

20

ADAMS & ALLEN.

ROAD

WATER SLUICE

46 ADAMS & ALLEN, QUARRY.

187 ft.

BRIDGE

SOUTH OPENING.

SWITCH.

155 x 20

155 x 20

200

769

37

R. & S. RR. BRANCH.

OFFICE

182 x 24

549

PROPERTY OF THE RUTLAND MARBLE Co

WEST RUTLAND, Vt

PROPERTY OF THE RUTLAND MARBLE Co

WEST RUTLAND, Vt

Scale: 1 Inch = 72 Feet.

CHURCH PROPERTY.

SHELDON & SLASON

ADAMS & ALLEN.

MARBLE Co.

ADAMS & ALLEN.

ADAMS & ALLEN QUARRY.

WATER SLUICE

SOUTH OPENING

SWITCH

R. & S. RR. BRANCH

OFFICE

BRIDGE

ROAD

526

191

269

674

226

315

513

36

20

37

28

78

187 ft.

46

24

200

769

79

34

12

64½

42

30

549

182 × 72

535 × 20

185 × 20

80 × 20

40 × 30

42 × 30

40 × 25

46 × 30

22 × 27

Bisson.

25. { Rutland Marble Co. vs. Ripley and Barnes
and
{ Ripley & Barnes vs. Rutland Marble Co.

HIGHWAY.

1006

526

574

986

Scale: 1 Inch = 72 Feet.

726

NORTH.

315

ADAMS & ALLEN.

RUTLAND MARBLE Co.

512

36

20

40

31

26

28

20

ROAD

WATER SLUICE

344ft.

OLD NORTH QUARRY

60ft.

24

26

754 × 20

755 × 20

40 × 30

755 × 20

409.20

78

20

187ft.

53ft.

BRIDGE

SOUTH OPENING.

SWITCH.

200

769

79

34

22

64½

730ft.

765ft.

NEW NORTH OPENING

100ft.

185ft.

NEW OPENING.

772 × 20

42 × 27

40 × 23

48 × 30

ROAD

619

R. & S. R.R. BRANCH.

RAIL WAY DERRICK

85

56 × 35

182 × 24

OFFICE

60 × 30

40 × 28

60 × 40

80 × 24

80 × 40

549

PROPERTY OF THE RUTLAND MARBLE Co

WEST RUTLAND, Vt

ROBERT S. STEVENS,
Plaintiff in Error,

vs.

Pelagie De Autri
Defendant in Error.

In the Supreme Court of the United States.

DEFENDANT'S BRIEF.

The defendant in error brought suit in ejectment, in the District Court of the Third Judicial District of the State of Kansas, against the plaintiff in error, for the land described in the petition, it being part of the land reserved by the sixth article of the treaty between the United States and the Kansas Nation of Indians made June 3, 1825, (7 U. S. Stat. at Large, 244–5.) for the defendant in erorr, she being one of the half-breeds described in said article sixth, as Pelagie one of the four children of Louis Gouin.

The plaintiff in error, denied the title of the defendant in error, and claimed title in himself as grantee of the defendant in error.

It was admitted by both parties, on the trial in the District Court, that the defendant in error, was, by the treaty above referred to, the reservee of the land in suit, and that she was in possession of said land on the 14th day of August, 1860.

The plaintiff in error, on the trial, offered in evidence. a deed from the defendant in error to him, dated August, 14th, 1860, for the land in controversy, which was objected to and excluded.

The judgment in the District Court was in favor of the defendant in error. The case was taken on error to the Supreme Court of the State, and there affirmed. See 2d Kansas Reports, page 243, and note on same page.

The only question presented in this Court is, whether the District Court erred in refusing to permit the deed to be read in evidence at the trial in that Court.

The stipulation in the treaty of 1825, is positive that the nation should not sell without the consent of the United States. This restriction applies to the individual members of the tribe, as well as to the nation, else the nation might sell to one of its own members, and then he might sell and defeat the whole restriction.

Goodell vs. Jackson 20 Johns (N. Y.) 694—718—733.

II. The act of 1860 did not attempt to abrogate the restrictions of the treaty. The prohibition continued in force, and the manner of selling these Half Breed lands was specifically pointed out—which was, not by the Indians themselves—but by the Secretary of the Interior. There is no ambiguity in the act. It needs no interpretation. The statute was affirmative and having provided the way in which the land could be sold, it, by implication, prohibited it from being sold in any other way.

12 Iowa 158.

Shawnee county vs. Carter, 2 Kan. State Rep. 115.

See also the opinion of the Court in this case, 2d Kansas State Rep. 243.

It is a salutary rule of law, that all contracts which have for their object anything contrary to the provisions of any statute, are void, and a contract that contravenes the policy and spirit of a statute, or attempts to defeat its operation, is equally void, as if against its positive provisions.

Hunt vs. Knickerbocker 5 Johns, 332—3--4.

Petit's Adm'r vs. Petit's distributees 32 Ala. 288.

St. Regis Indians vs. Drum, 19 Johns 127.

Lee vs. Glover, 8 Conn. 189.

Jackson vs. Wood 7 Johns 290.

3 Ind. 494,—8 id. 6.

III. If the deed was void the plaintiff in error was not injured by its not being received in evidence, and it was properly rejected.

J. S. Black

Attorney for Defendant in error.

Robert S Stevens

to

Celazie Dr Aubri

Brief of Dept in Prov

ROBERT S. STEVENS,
Plaintiff in Error,

vs.

Victoria Smith,
Defendant in Error.

In the Supreme Court of the United States.

DEFENDANT'S BRIEF.

The defendant in error brought suit in ejectment, in the District Court of the Third Judicial District of the State of Kansas, against the plaintiff in error, for the land described in the petition, it being part of the land reserved by the sixth article of the treaty between the United States and the Kansas Nation of Indians made June 3, 1825, (7 U. S. Stat. at Large, 244–5.) for the defendant in erorr, she being one of the half-breeds described in said article sixth, as Victoria one of the four children of Louis Gonie.

The plaintiff in error, denied the title of the defendant in error, and claimed title in himself as grantee of the defendant in error.

It was admitted by both parties, on the trial in the District Court, that the defendant in error, was, by the treaty above referred to, the reservee of the land in suit, and that she was in possession of said land on the 14th day of August, 1860.

The plaintiff in error, on the trial, offered in evidence. a deed from the defendant in error to him, dated August, 14th, 1860, for the land in controversy, which was objected to and excluded.

The judgment in the District Court was in favor of the defendant in error. The case was taken on error to the Supreme Court of the State, and there affirmed. See 2d Kansas Reports, page 243, and note on same page.

The only question presented in this Court is, whether the District Court erred in refusing to permit the deed to be read in evidence at the trial in that Court.

I. The deed from the defendant in error to the plaintiff in error, which was offered in evidence in the District Court, was void and therefore unavailing to show title if it had been received. The land described in the deed was reserved to defendant in error, by the provisions of the treaty of June 3d, 1825, between the United States and the Kansas Nation of Indians, the defendant in error being a member of that nation, and recognized as such by the sixth article of the treaty, and by the act of Congress passed May 26th, 1860, and by the payment of her annuity, with the other members of the tribe.

7th U. S. Stat. at Large, page 245.
12 U. S. Stat. at Large, page 21.

By the eleventh article of the treaty it is stipulated that the said Kansas Nation shall never sell, relinquish, or in any manner dispose of the lands therein reserved to any other nation, person or persons whatever, without the permission of the United States, for that purpose, first had and obtained.

7th U. S. Stat. at Large 245—247, Art. 6 and 11.

By the provisions of that article, (11) the Indians were to remain under the protection of the United States.

Section 1 of the act of Congress, approved May 26th, 1860, (U. S. Stat. at large, Vol. 12, page 21,) vested the title of the United States in the reservee. Section two prescribes the manner in which the land may be sold, to wit: By the Secretary of the Interior, in accordance with such rules and regulations as may be prescribed by the Commissioner of Indian Affairs, and approved by the Secretary of the Interior, and in case of sale, patents are to be issued to the purchaser. Section first provides against giving any force to any contract for the sale of the lands theretofore made by the Reservees or their heirs. This method of conveyance of their land was intended as a means of protection to the Indians under the 11th article of the treaty.

From these provisions taken together, it is clear that it was not intended that any conveyance whatever, should or could be made by the Reservees themselves.

The stipulation in the treaty of 1825, is positive that the nation should not sell without the consent of the United States. This restriction applies to the individual members of the tribe, as well as to the nation, else the nation might sell to one of its own members, and then he might sell and defeat the whole restriction.

Goodell vs. Jackson 20 Johns (N. Y.) 694—718—733.

II. The act of 1860 did not attempt to abrogate the restrictions of the treaty. The prohibition continued in force, and the manner of selling these Half Breed lands was specifically pointed out—which was, not by the Indians themselves—but by the Secretary of the Interior. There is no ambiguity in the act. It needs no interpretation. The statute was affirmative and having provided the way in which the land could be sold, it, by implication, prohibited it from being sold in any other way.

12 Iowa 158.

Shawnee county vs. Carter, 2 Kan. State Rep. 115.

See also the opinion of the Court in this case, 2d Kansas State Rep. 243.

It is a salutary rule of law, that all contracts which have for their object anything contrary to the provisions of any statute, are void, and a contract that contravenes the policy and spirit of a statute, or attempts to defeat its operation, is equally void, as if against its positive provisions.

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Lee vs. Glover, 8 Conn. 189.

Jackson vs. Wood 7 Johns 290.

3 Ind. 494,—8 id. 6.

III. If the deed was void the plaintiff in error was not injured by its not being received in evidence, and it was properly rejected.

D. S. Black

Attorney for Defendant in error.

Robert L Stivers

vs

Victoria Smith

Brief of Deft In Error

ROBERT S. STEVENS,
Plaintiff in Error,

vs.

Adel Billmard
Defendant in Error.

In the Supreme Court of the United States.

DEFENDANT'S BRIEF.

The defendant in error brought suit in ejectment, in the District Court of the Third Judicial District of the State of Kansas, against the plaintiff in error, for the land described in the petition, it being part of the land reserved by the sixth article of the treaty between the United States and the Kansas Nation of Indians made June 3, 1825, (7 U. S. Stat. at Large, 244–5.) for the defendant in erorr, she being one of the half-breeds described in said article sixth, as Adel ——— one of the two children of Clement.

The plaintiff in error, denied the title of the defendant in error, and claimed title in himself as grantee of the defendant in error.

It was admitted by both parties, on the trial in the District Court, that the defendant in error, was, by the treaty above referred to, the reservee of the land in suit, and that she was in possession of said land on the 14th day of August, 1860.

The plaintiff in error, on the trial, offered in evidence, a deed from the defendant in error to him, dated August, 14th, 1860, for the land in controversy, which was objected to and excluded.

The judgment in the District Court was in favor of the defendant in error. The case was taken on error to the Supreme Court of the State, and there affirmed. See 2d Kansas Reports, page 243, and note on same page.

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From these provisions taken together, it is clear that it was not intended that any conveyance whatever, should or could be made by the Reservees themselves.

ROBERT S. STEVENS,
Plaintiff in Error,

vs.

Pelagie De Ambri
Defendant in Error.

In the Supreme Court of the United States.

DEFENDANT'S BRIEF.

The defendant in error brought suit in ejectment, in the District Court of the Third Judicial District of the State of Kansas, against the plaintiff in error, for the land described in the petition, it being part of the land reserved by the sixth article of the treaty between the United States and the Kansas Nation of Indians made June 3, 1825, (7 U. S. Stat. at Large, 244–5.) for the defendant in crorr, she being one of the half-breeds described in said article sixth, as Pelagie one of the four children of Louis Gamil.

The plaintiff in error, denied the title of the defendant in error, and claimed title in himself as grantee of the defendant in error.

It was admitted by both parties, on the trial in the District Court, that the defendant in error, was, by the treaty above referred to, the reservee of the land in suit, and that she was in possession of said land on the 14th day of August, 1860.

The plaintiff in error, on the trial, offered in evidence. a deed from the defendant in error to him, dated August, 14th, 1860, for the land in controversy, which was objected to and excluded.

The judgment in the District Court was in favor of the defendant in error. The case was taken on error to the Supreme Court of the State, and there affirmed. See 2d Kansas Reports, page 243, and note on same page.

The only question presented in this Court is, whether the District Court erred in refusing to permit the deed to be read in evidence at the trial in that Court.

East Water St.

Walker's Point Bridge

Warehouse

Barclay Street

Ferry Street

River Street

South Water Street

Scale 30 feet to an inch

Kinsella's Warehouse

Warehouse

Line

Water

Point St.

Ordnance Dock line

Section line

Reed St.

Bayou

11	10	9	8	7	6
44¼	50	50	50	45	45

W S. Rowhidge
Attest / Edgarmon
Court Commissioner

No. 470 { Yates
vs.
City of Milwaukee et al

Page 71,
No. 1

Chicago St.

East Water St.

Walker's Point Br

Keller's Warehouse

Warehouse

Drawbridge

33

Milwaukee River

Water line as per

Wright's Warehouse

Menomonee Street

W. W. Bird Road Dep't Warehouse

Menomonee River

West Water Street

Menomonee Bridge

Ordnance Dock line

100 feet

Shepardson's Warehouse

Point St.

Section line

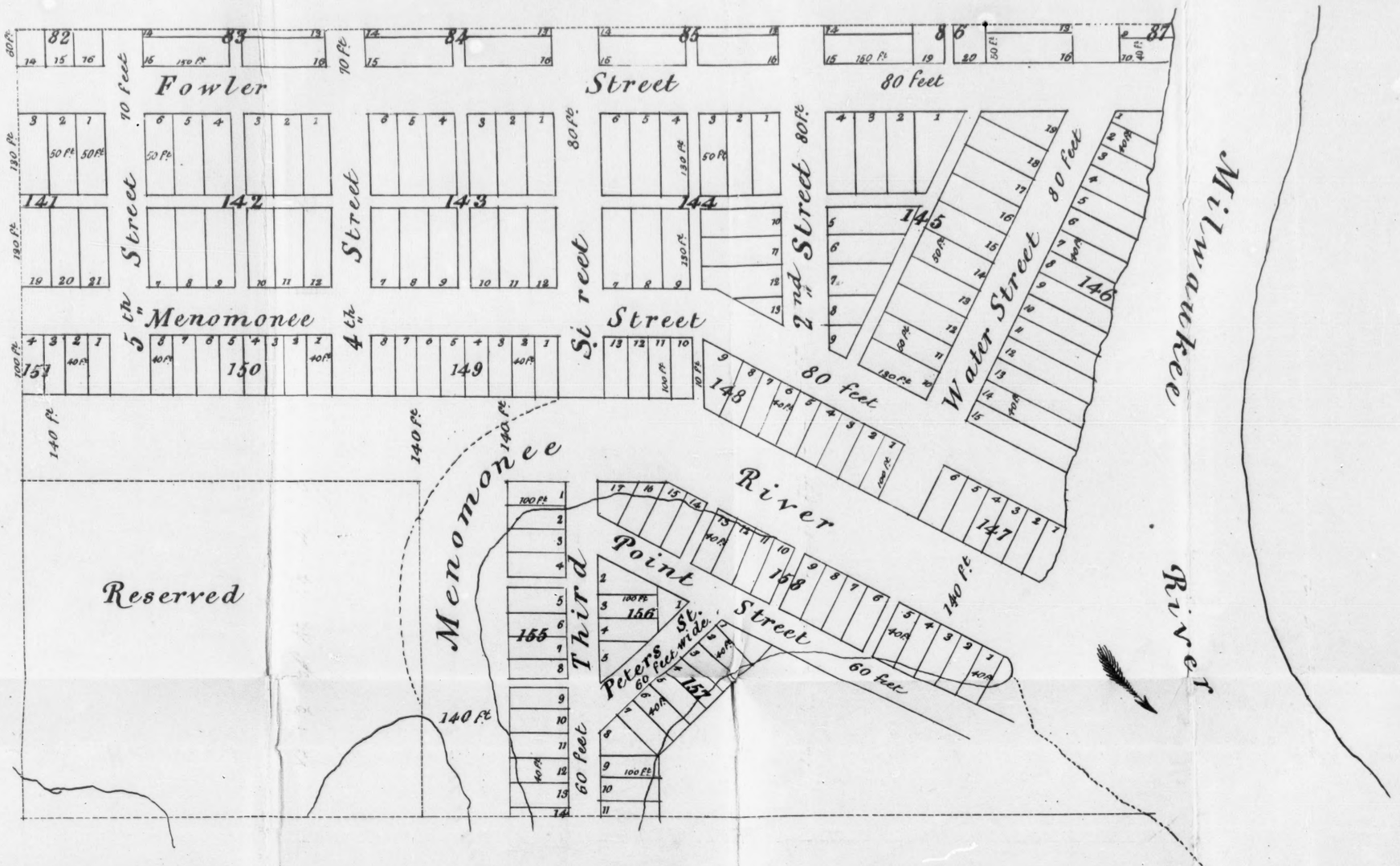
Bayou

No 470 Yales vs City of Milwaukee et al

Page 85 No 2.

Exhibit B

COPY.



Know all men by these presents. that we the proprietors of Fraction or lot No. Six in Section No. Twenty Nine in Township No. Seven North of Range No. Twenty Two East of the Fourth Principal meridian Wisconsin Territory have laid off a plat of said Fraction lot No. Six as an Addition to the town of Milwaukee on the West Side of Milwaukee River. The Streets are of such width as are marked on the plat in feet. The alleys as represented on the Plat are twenty feet wide. The dimensions of some of the lots are varied by diagonal Streets and by the Course of the Milwaukee and Menomonee Rivers. That part of the said Fraction or lot and represented on the Plat as "Reserved" is retained by the proprietors subject to their future direction and disposition. —

Witness our hands and Seals this twenty fourth day of June Anno Domini Eighteen hundred and thirdy Seven

Witness Augustus Story
N. F. Hyer

Henry W Cleveland by his Attornies Onslow Peters Cyrus Leland	{L.S.}	Jona. E. Arnold	{L.S.}
		Isaac R. Moores	{Seal}
Cyrus Leland	{Seal}	Jno H. Murphy	{L.S.}
Onslow Peters	{Seal}	H Cunningham	{Seal}
Samuel H Graves	{Seal}	A. McDonald	{Seal}
Morgan L. Martin by his attorney Solomon Juneau	{L.S.}	A. McDonald, Isaac R. Moores	executors of the last will and testament of Isaac H Alexander dec'd
Solomon Juneau	{L.S.}		
Geo Reed	{Seal}		
Michael Dousman by his Attorney George D. Dousman	{Seal}		

Territory of Wisconsin } L.S.
Milwaukee County }

Personally appeared before me Cyrus Leland Onslow Peters Samuel H. Graves. Solomon Juneau, Jona. E. Arnold, and George Reed also appeared Henry W. Cleveland by his attornies Onslow Peters and Cyrus Leland, Morgan L. Martin by his attorney Solomon Juneau and Michael Dousman by his attorney George D. Dousman and several acknowledged the execution of the above Instrument to be their Voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand at Milwaukee this 26th day of June in the year of One thousand eight-hundred and thirdy seven. ---------- N. F. Hyer Justice of the Peace

State of Illinois County of Vermilion, set.

Personally appeared before me Isaac R. Moores, John H. Murphy, Hejekiah Cunningham, Alexander McDonald and also Alexander McDonald and Isaac R. Moores, Executors of the last will and testament of Isaac H. Alexander deceased and severally acknowledged the Execution of the above Instrument to be their Voluntary act and Deed for the uses and purposes therein mentioned.

Notarial Seal

In testimony whereof I have hereunto set my hand and affixed my Notarial seal of said County at Danville this 16th day of August A.D. 1937.
Lucas Williams Notary Public.

Received for Record May 17th 1862 at 10 o'clock A.M. Recorded in Vol. II of Plats P. 113 & 114.
Christ Fessel Register

ss the correct Copy on P. 114.

East

The undersigned took & witnessed soundings at the East end of Block 158 in 4 Ward and find the soundings on the outside of the Dock built by Peter Yates to be represented below. The outside tier of figures being number of inches of water 10 feet from the dock.

We find the depth of water 50 ft East of the East dock as follows:

100 feet 43 45 46 49 52 56 56 57 44 1 foot 16 6

16 30 feet line 4 12 25 25 31 39 38 34 40 36 33

27 4 inches 30 feet from corner.

26 25½ 25 30 17 31 30 29½ 30 25 27 31 34

105 5 10 20 30 40 50 60 70 80 90 100 105

28 24 19 19½ 15 17

100 90 80 70 60 50 40 30 20 10

13 13½ 16½ 11 12 40 71 32 46 50 57 10

60 50 40 30 10

Exhibit "B"

Soundings property

Wharf

North

South

From N.E. corner to Dousmans Dock, straight line 348 feet.

From center of Dock to W.P. Bridge 373'.

October 17. 1856.

Benjamin Bagnall
John P. Willard
James Mc. Intire
Wm. Mc. Cullam
John Tharsen
Jno. Wells Jr.
Stephen Batchelder
Jacob Nunnemacher
John Wilton.

Scale: 10 feet to the inch.

No 470 { Yates vs. City of Milwaukee et al.

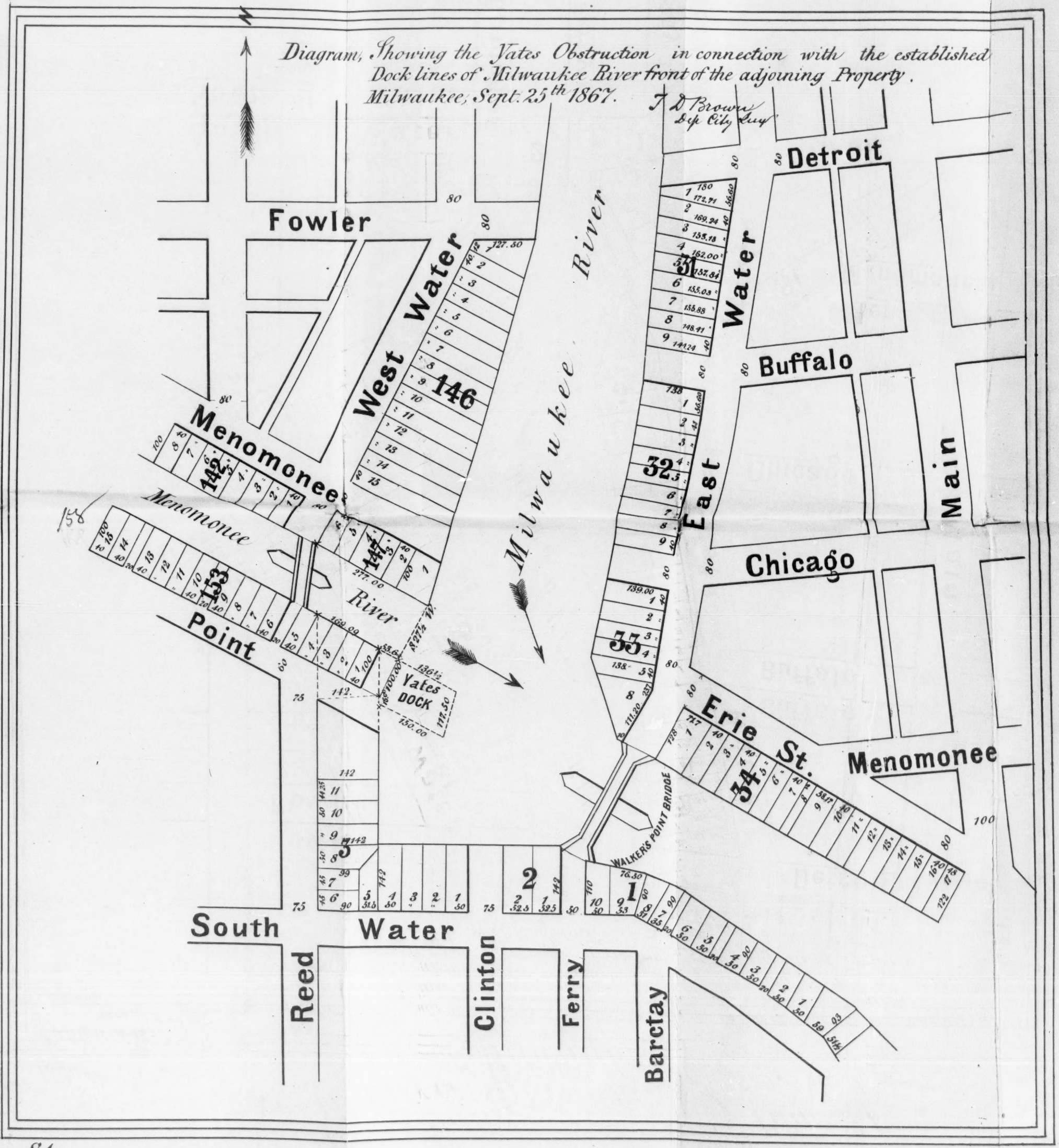
Page 72.
No 2.

72

No. 470 Yates, vs: City of Milwaukee. } Page 84. No. 1.

Exhibit A1

Diagram, Showing the Yates Obstruction in connection with the established Dock lines of Milwaukee River front of the adjoining Property.
Milwaukee, Sept. 25th 1867.



84

Ja 1003.

Reissue.

Wm H. Seymour's

Impts on Reaping Machines

Fig. 1st

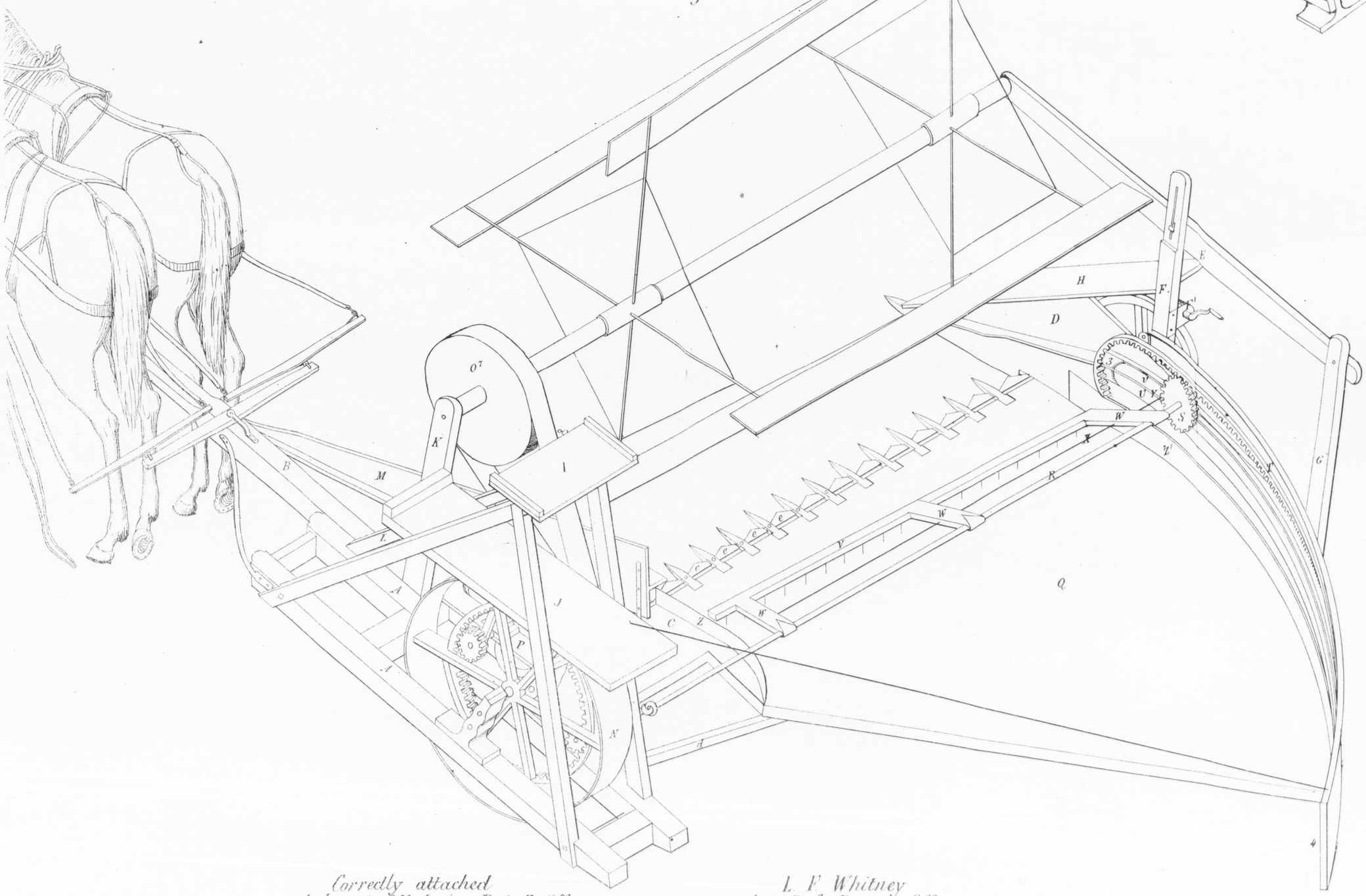
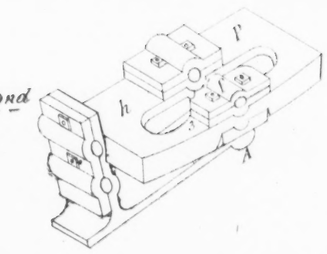


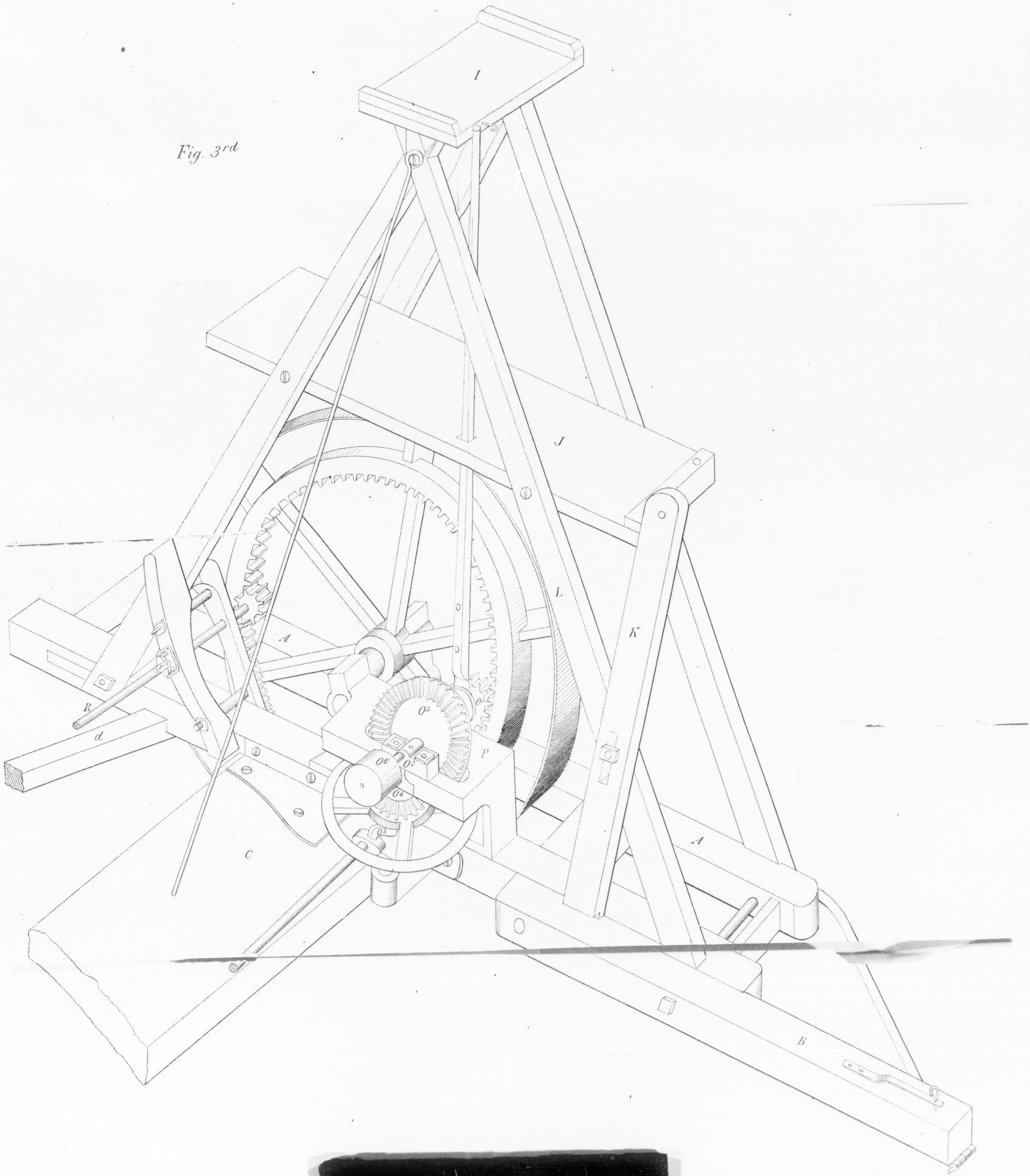
Fig 2nd



Correctly attached
Arthur L. Mc Intire Drt P. Off.

L. F. Whitney
Asst Drft. Patent Office

Fig. 3rd



No 4

Reissue.

A. Palmer & S. G. Williams' Harvesting Machine.

Fig. 1

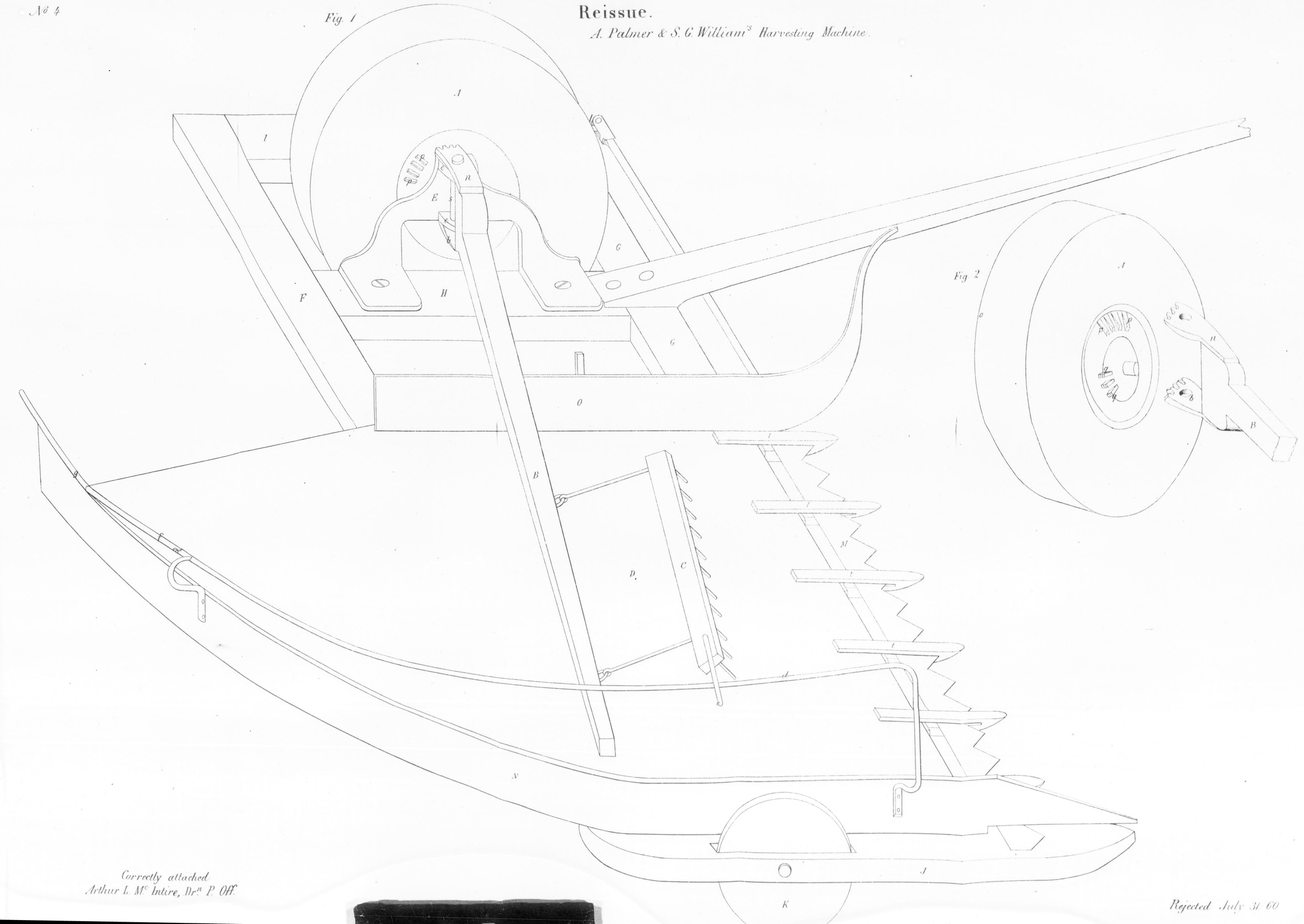


Fig. 2

Correctly attached
Arthur L. Mc Intire, Drn P. Off.

Rejected July 31 60